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A COLLECTION

OF

# THE ACTS

PASSED BY

THE GOVERNOR GENERAL OF INDIA IN COUNCIL

IN THE YEAR

1908



CALCUTTA

SUPERINTENDENT GOVERNMENT PRINTING, INDIA

1909

CALCUTTA  
SUPERINTENDENT GOVERNMENT PRINTING, INDIA  
8, HASTINGS STREET

# TITLES OF ACTS

PASSED BY

## THE GOVERNOR GENERAL OF INDIA IN COUNCIL

IN THE YEAR 1908.

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- I. An Act further to amend the Legal Practitioners Act, 1879.
- II. „ further to amend the Indian Tariff Act, 1894.
- III. „ further to amend the Law relating to Private Trusts and Trustees.
- IV. „ further to amend the Coroners Act, 1871, and the Prisoners Act, 1900.
- V. „ to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature.
- VI. „ further to amend the Law relating to Explosive Substances.
- VII. „ for the prevention of incitements to murder and to other offences in newspapers.
- VIII. „ to amend the Local Authorities Loan Act, 1904.
- IX. „ to consolidate and amend the Law for the Limitation of Suits, and for other purposes.
- X. „ to make special provision for the payment of duty on salt in certain cases.
- XI. „ to amend the Assam Labour and Emigration Act, 1871.
- XII. „ further to amend the Indian Emigration Act, 1883.
- XIII. „ to provide for the appointment of a Financial Commissioner for the Central Provinces and further to amend the Central Provinces Land-revenue Act, 1881.
- XIV. „ to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace.
- XV. „ to consolidate the Enactments relating to Ports and Port-charges.
- XVI. „ to consolidate the Enactments relating to the Registration of Documents.
- XVII. „ to consolidate the Enactments relating to the Emigration of Natives of India.
- XVIII. „ further to amend the Indian Merchant Shipping Act, 1880.



# ACT No. I OF 1908.

[PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.]

*(Received the assent of the Governor General on the 3rd  
January, 1908.)*

## An Act further to amend the Legal Practitioners Act, 1879.

XVIII of  
1879.

WHEREAS it is expedient further to amend the Legal Practitioners Act, 1879; It is hereby enacted as follows :—

1. This Act may be called the Legal Practitioners (Amendment) Act, 1908. Short title.

XVIII of  
1879.

2. In section 4 of the Legal Practitioners Act, 1879, the following amendments shall be made, namely :— Amendment  
of section 4 of  
Act XVIII  
of 1879.

(a) after the words “ this Act ” the words “ or enrolled as a Pleader in the Chief Court of the Punjab under section 8 of this Act ” shall be inserted ; and

(b) after the words “ no such Vakil ” the words “ or Pleader ” shall be added.

3. To section 7 of the said Act the following shall be added, namely :— Additional  
section 7 of  
Act XVIII  
of 1879.

“ Provided that, on the admission as a Pleader of any person who has been previously entered as a Vakil or Attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorising him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section.”

4. To

Amendment  
of section 25  
of Act XVIII  
of 1879.

4. To section 25 of the said Act the following shall be added, namely :—

“ Provided also that no stamped paper shall be required in the case of a certificate whether original or renewed authorising, under section 7, a Vakil or Attorney on the roll of a High Court established by Royal Charter to practise as a Pleader.”

Amendment  
of section 38  
of Act XVIII  
of 1879.

5. In section 38 of the said Act, “ 7,” shall be added after “ 5,” and “ 25,” after “ 16.”

## ACT NO. II OF 1908.

[PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.]

*(Received the assent of the Governor General on the 3rd  
January, 1908.)*

### An Act further to amend the Indian Tariff Act, 1894.

VIII of 1894. **W**HEREAS it is expedient further to amend the Indian Tariff Act, 1894; It is hereby enacted as follows :—

1. This Act may be called the Indian Tariff Short title.  
(Amendment) Act, 1908.

VIII of 1894. 2. In No. 1 of Schedule III of the Indian Tariff Amendment  
III of 1896. Act, 1894, as amended by the Indian Tariff Act of Schedule  
III of Act  
VIII of 1894.  
(1894) Amendment Act, 1896, “annas 2” shall be substituted for “anna 1” in the fourth column as the rate of duty to be levied and collected per Imperial gallon or six quart bottles of ale, beer, porter, cider and other fermented liquors.



## ACT No. III OF 1908.

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[PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.]

*(Received the assent of the Governor General on the 17th  
January, 1908.)*

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An Act further to amend the law relating to  
Private Trusts and Trustees.

WHEREAS it is expedient further to amend the  
law relating to Private Trusts and Trustees; It  
is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Trusts  
(Amendment) Act, 1908.

Amendment  
of section 20,  
Act II of  
1882.

2. For clause (d) of section 20 of the Indian  
Trusts Act, 1882, the following clause shall be sub-  
stituted, namely:—

“(d) in debentures or other securities for money  
issued, under the authority of any Act of  
a Legislature established in British India,  
by or on behalf of any municipal body,  
port trust or city improvement trust in any  
Presidency-town or in Rangoon Town, or  
by or on behalf of the trustees of the port  
of Karachi;”.

## ACT NO. IV OF 1908.

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[PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.]

(*Received the assent of the Governor General on the 14th February, 1908.*)

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An Act further to amend the Coroners Act, 1871, and the Prisoners Act, 1900.

IV of 1871.  
III of 1900.

WHEREAS it is expedient further to amend the Coroners Act, 1871, and the Prisoners Act, 1900; It is hereby enacted as follows :—

1. This Act may be called the Coroners (Amendment) Act, 1908. Short title,
2. In section 9 of the said Act, for the word "buried" the words "disposed of" shall be substituted. Amendment of section 9, Act IV of 1871.
3. In section 11 of the said Act, for the words "where the first was insufficient" the words "where the Coroner considers it necessary or desirable in the interests of justice to take a further inquisition" shall be substituted. Amendment of section 11, Act IV of 1871.
4. To section 15 of the said Act the following shall be added, namely :— Addition of proviso to section 15, Act IV of 1871.

"Provided that the Coroner may, with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied, from medical evidence or medical certificates, that no advantage would result from such viewing."
5. In section 17 of the said Act, for the words and figures "Act No. XV of 1869 (*to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them*)," the words and figures "Part IX of the Prisoners Act, 1900," shall be substituted. Amendment of section 17, Act IV of 1871.

6. After

Addition of  
new section  
18A to Act  
IV of 1871.

6. After section 18 of the said Act the following shall be inserted, namely :—

Report of  
Chemical  
Examiner.

“18A. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898.”

Addition to  
section 21,  
Act IV of  
1871.

7. To section 21 of the said Act the following shall be added, namely :—

“and the whole, or such part thereof as to the Coroner seems fit, shall, in default of attendance by the jurors, be recoverable in the same manner as a fine imposed under section 31.”

Substitution  
of new  
section 25,  
Act IV of  
1871.

8. For section 25 of the said Act the following shall be substituted, namely :—

Procedure  
where death  
is found  
due to an  
act amount-  
ing to an  
offence.

“25. When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police.”

Substitution  
of new  
section 26,  
Act IV of  
1871.

9. For section 26 of the said Act the following shall be substituted, namely :—

Power to  
arrest and  
commit for  
trial.

“26. The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial.”

Repeal of  
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1871.

10. Section 27 of the said Act is hereby repealed.

11. In

11. In section 28 of the said Act, for the word "burial" the word "disposal" shall be substituted. Amendment of section 28, Act IV of 1871.

12. In the Second Schedule of the said Act, for the words "on view of the body of A. B. then and there lying dead" the words "in the case of A. B. deceased" shall be substituted. Amendment of Second Schedule Act IV of 1871.

III of 1900. 13. In section 11 of the Prisoners Act, 1900, for the words "Justice of the Peace or Coroner" the words "or Justice of the Peace" shall be substituted. Amendment of Act II of 1900, section 11.

# THE CODE OF CIVIL PROCEDURE, 1908

## (ACT V OF 1908).

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## ACT N<sup>o</sup>. V OF 1908.

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

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*(Received the assent of the Governor General on the 21st  
March, 1908.)*

An Act to consolidate and amend the laws  
relating to the Procedure of the Courts of  
Civil Judicature.

WHEREAS it is expedient to consolidate and  
amend the laws relating to the procedure of the  
Courts of Civil Judicature; It is hereby enacted as  
follows :—

### PRELIMINARY.

Short title,  
commence-  
ment and  
extent.

1. (1) This Act may be cited as the Code of Civil  
Procedure, 1908.

(2) It shall come into force on the first day of  
January, 1909.

(3) This section and sections 155 to 158 extend  
to the whole of British India: the rest of the Code  
extends to the whole of British India, except the  
Scheduled Districts.

Definitions.

2. In this Act, unless there is anything repug-  
nant in the subject or context,—

(1) “Code” includes rules:

(2) “decree” means the formal expression of an  
adjudication which, so far as regards the Court  
expressing it, conclusively determines the rights of  
the parties with regard to all or any of the matters  
in controversy in the suit and may be either pre-  
liminary

*(Preliminary.)*

liminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

*Explanation.*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final :

(3) “decree-holder” means any person in whose favour a decree has been passed or an order capable of execution has been made :

(4) “district” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court :

(5) “foreign Court” means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Governor General in Council :

(6) “foreign judgment” means the judgment of a foreign Court :

(7) “Government Pleader” includes any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader :

(8) “Judge” means the presiding officer of a Civil Court :

(9) “judgment” means the statement given by the Judge of the grounds of a decree or order :

(10) “judgment-debtor” means any person against

*(Preliminary.)*

against whom a decree has been passed or an order capable of execution has been made :

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued :

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession :

(13) "moveable property" includes growing crops :

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree :

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court :

(16) "prescribed" means prescribed by rules :

(17) "public officer" means a person falling under any of the following descriptions, namely :—

(a) every Judge;

(b) every member of the Indian Civil Service;

(c) every commissioned or gazetted officer in the military or naval forces of His Majesty, including His Majesty's Indian Marine Service, while serving under the Government;

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report

*(Preliminary.)*

or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;

- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- (f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
- (h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty:

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125:

(19) "share in a corporation" shall be deemed to include



*(Preliminary.)*

include stock, debenture stock, debentures or bonds :  
and

(20) "signed," save in the case of a judgment or decree, includes stamped.

Subordina-  
tion of  
Courts.

3. For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

Savings.

4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

Application  
of the Code  
to Revenue  
Courts.

5. (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the  
rent,

*(Preliminary.)*

rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction. Pecuniary jurisdiction.

EX of 1887. 7. The following provisions shall not extend to Courts constituted under the Provincial Small Causes Courts Act, 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,— Provincial Small Cause Courts.

(a) so much of the body of the Code as relates to—

- (i) suits excepted from the cognizance of a Court of Small Causes;
- (ii) the execution of decrees in such suits;
- (iii) the execution of decrees against immoveable property; and

(b) the following sections, that is to say,—

section 9,  
sections 91 and 92,  
sections 94 and 95 so far as they relate  
to injunctions and interlocutory  
orders, and  
sections 96 to 112 and 115.

EX of 1882. 8. Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, 77 and 155 to 158, and by the Presidency Small Cause Courts Act, 1882, the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay. Presidency Small Cause Courts.

## (Part I.—Suits in General.)

## PART I.

## SUITS IN GENERAL.

JURISDICTION OF THE COURTS AND *Res Judicata*.

Courts to try  
all civil suits  
unless barred.

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

*Explanation.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Stay of suit.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by the Governor General in Council and having like jurisdiction, or before His Majesty in Council.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

*Res judicata.*

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

*Explanation I.*

*(Part I.—Suits in General.)*

*Explanation I.*—The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

*Explanation II.*—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

*Explanation III.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation IV.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation V.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

*Explanation VI.*—Where persons litigate *bonâ fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies. Bar to further suit.

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except— When foreign judgment not conclusive.

(a) where

*(Part I.—Suits in General.)*

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in British India.

Presumption  
as to foreign  
judgments.

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

## PLACE OF SUING.

Court in  
which suits  
to be insti-  
tuted.  
Suits to be  
instituted  
where sub-  
ject-matter  
situate.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

16. Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immoveable property with or without rent or profits,
- (b) for the partition of immoveable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for

*(Part I.—Suits in General.)*

(e) for compensation for wrong to immoveable property,

(f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

*Explanation.*—In this section “property” means property situate in British India.

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Suits for immoveable property situate within jurisdiction of different Courts.

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18. (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction :

Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

Provided that the suit is one with respect to which

*(Part 1.—Suits in General.)*

which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suits for compensation for wrongs to person or moveables.

19. Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

*Illustrations.*

(a) A, residing in Delhi, beats B in Calcutta, B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

Other suits to be instituted where defendants reside or cause of action arises.

20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or

*(Part I.—Suits in General.)*

as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

*Explanation I.*—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

*Explanation II.*—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Illustrations.*

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

**21.** No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. Objections to jurisdiction.

**22.** Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, Power to transfer suits which may be instituted in more than one Court.



*(Part I.—Suits in General.)*

parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

To what  
Court appli-  
cation lies,

**23.** (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

General  
power of  
transfer and  
withdrawal.

**24.** (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer

*(Part I.—Suits in General.)*

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

25. (1) Where any party to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the Governor General in Council, who may, by notification in the Gazette of India, transfer such suit, appeal or proceeding to any other High Court.

*Power of Governor General in Council to transfer suits.*

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case.

## INSTITUTION OF SUITS.

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

*Institution of suits.*

## SUMMONS AND DISCOVERY.

27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

*Summons to defendants.*

28. (1) A

*(Part I.—Suits in General.)*

Service of  
summons  
where de-  
fendant  
resides in  
another pro-  
vince.

**28.** (1) A summons may be sent for service in another province to such Court and in such manner as may be prescribed by rules in force in that province.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

Service of  
foreign  
summonses.

**29.** Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts :

Provided that the Courts issuing such summonses have been established or continued by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.

Power to  
order dis-  
covery and  
the like.

**30.** Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

Summons to  
witness.

**31.** The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

**32.** The

*(Part I.—Suits in General.)*

**32.** The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding five hundred rupees;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

## JUDGMENT AND DECREE.

**33.** The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

## INTEREST.

**34.** (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

## COSTS.

**35.** (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident

*(Part II.—Execution.)*

incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

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## PART II.

### EXECUTION.

#### GENERAL.

Application  
to orders.

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Definition of  
Court which  
passed a  
decree.

37. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

COURTS

*(Part II.—Execution.)*

## COURTS BY WHICH DECREES MAY BE EXECUTED.

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Court by which decree may be executed

39. (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

Transfer of decree.

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Where a decree is sent for execution in another province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province.

Transfer of decree to Court in another province.

41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

Result of execution-proceedings to be certified.

42. The

## (Part II.—Execution.)

Powers of Court in executing transferred decree.

**42.** The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Execution of decrees passed by British Courts in places to which this Part does not extend or in foreign territory.

**43.** Any decree passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in British India.

Execution of decrees passed by Courts of native States.

**44.** The Governor General in Council may, by notification in the Gazette of India, declare that the decrees of any Civil or Revenue Courts situate in the territories of any native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor General in Council, or any class of such decrees, may be executed in British India as if they had been passed by the Courts of British India.

Execution of decrees in foreign territory.

**45.** So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.

Precepts.

**46.** (1) Upon the application of the decree-holder the

*(Part II.—Execution.)*

the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree :

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

**QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE.**

47. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

Questions to be determined by the Court executing decree.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

*Explanation.*—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.



## (Part II.—Execution.)

## LIMIT OF TIME FOR EXECUTION.

Execution  
barred in  
certain cases.

48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

(a) the date of the decree sought to be executed, or,

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application; or

(b) to limit or otherwise affect the operation of article 180 of the second schedule to the Indian Limitation Act, 1877.

XV of 1877.

## TRANSFEREES AND LEGAL REPRESENTATIVES.

Transferee.

49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Legal representative.

50. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute

*(Part II.—Execution.)*

execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

## PROCEDURE IN EXECUTION.

51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

Powers of  
Court to  
enforce  
execution.

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require.

52. (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

Enforcement  
of decree  
against legal  
representa-  
tive.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same

## (Part II.—Execution.)

same manner as if the decree had been against him personally.

Liability of  
ancestral  
property.

**53.** For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Partition of  
estate or  
separation of  
share.

**54.** Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

## ARREST AND DETENTION.

Arrest and  
detention.

**55. (1)** A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Local Government may appoint for the detention of persons ordered by the Courts of such district to be detained :

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise :

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto.

*(Part II.—Execution.)*

thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found :

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest :

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Local Government may, by notification in the local official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Local Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will  
**appear,**

## (Part II.—Execution.)

appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court shall release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

Prohibition  
of arrest or  
detention of  
women in  
execution of  
decree for  
money.  
Subsistence-  
allowance.

56. Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

57. The Local Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Detention  
and release.

58. (1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,

(b) in any other case for a period of six weeks :

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence-allowance :

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

## (Part II.—Execution.)

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

59. (1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness. Release on ground of illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Local Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

## ATTACHMENT.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the Property liable to attachment and sale in execution of decree.

*(Part II.—Execution.)*

the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely :—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;
- (d) books of account;
- (e) a mere right to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the Gazette of India by the Governor General in Council in this behalf, and political pensions;
- (h) allowances (being less than salary) of any public officer or of any servant of a railway

*(Part II.—Execution.)*

railway company or local authority while absent from duty;

(i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

(i) the whole of the salary, where the salary does not exceed twenty rupees monthly;

(ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and

(iii) one moiety of the salary in any other case;

(j) the pay and allowances of persons to whom the Indian Articles of War apply;

V of 1869.

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

IX of 1897.

(l) the wages of labourers and domestic servants whether payable in money or in kind;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any law passed under the Indian Councils Acts, 1861 and 1892, to be exempt from liability to attachment or sale in execution of a decree; and,

(p) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law  
for

24 & 25 Vict.,  
c. 67; 55 & 56  
Vict., c. 14.



*(Part II.—Execution.)*

for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

*Explanation.*—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed—

(a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or

(b) to affect the provisions of the Army Act or <sup>44 & 45 Vic.</sup> of any similar law for the time being in force.

Partial  
exemption  
of agricul-  
tural produce.

**61.** The Local Government, with the previous sanction of the Governor General in Council, may, by general or special order published in the local official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the Local Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

Seizure of  
property in  
dwelling-  
house.

**62.** (1) No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the  
person

*(Part II.—Execution.)*

person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

**63.** (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Property attached in execution of decrees of several Courts.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

**64.** Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void.

*Explanation.*—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

**SALE.**

**65.** Where immoveable property is sold in execution

Purchaser's title.

*(Part II.—Execution.)*

execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

**66.** (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Power for Local Government to make rules as to sales of land in execution of decrees for payment of money.

**67.** The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value.

DELEGATION TO COLLECTOR OF POWER TO EXECUTE  
DECREES AGAINST IMMOVEABLE PROPERTY.

Power to prescribe rules for transferring to Collector execution of certain decrees.

**68.** The Local Government may, with the previous sanction of the Governor General in Council, declare, by notification in the local official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees

*(Part II.—Execution.)*

decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

Provisions of Third Schedule to apply.

70. (1) The Local Government may make rules consistent with the aforesaid provisions—

Rules of procedure.

(a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court;

(b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector;

(c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

(2) A power conferred by rules made under subsection (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the Court.

Jurisdiction of Civil Courts barred.

*(Part II.—Execution.)*

Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

Collector deemed to be acting judicially.

**71.** In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially.

Where Court may authorize Collector to stay public sale of land.

**72.** (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

## DISTRIBUTION OF ASSETS.

Proceeds of execution sale to be rateably distributed among decree-holders.

**73.** (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons :

Provided as follows :—

(a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent

*(Part II.—Execution.)*

consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

- (c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and,

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

## RESISTANCE TO EXECUTION.

**74.** Where the Court is satisfied that the holder of a decree for the possession of immoveable property or that the purchaser of immoveable property sold

Resistance to  
execution.

in

*(Part III.—Incidental Proceedings.)*

in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

**PART III.****INCIDENTAL PROCEEDINGS.****COMMISSIONS.**

Power of  
Court to issue  
commissions;

**75.** Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

Commission  
to another  
Court.

**76.** (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a province other than the province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

**77.** In

(Part III.—Incidental Proceedings. Part IV.—  
Suits in Particular Cases.)

77. In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within British India. Letter of request.

78. The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by— Commissions issued by foreign Courts.

- (a) Courts situate beyond the limits of British India and established or continued by the authority of His Majesty or of the Governor General in Council, or
- (b) Courts situate in any part of the British Empire other than British India, or
- (c) Courts of any foreign country for the time being in alliance with His Majesty.

## PART IV.

### SUITS IN PARTICULAR CASES.

#### SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.

79. (1) Suits by or against the Government shall be instituted by or against the Secretary of State for India in Council. Suits by or against Government.

(2) Nothing in this section shall be deemed to limit or otherwise affect any information exhibited by the Advocate General in exercise of the power declared by section 111 of the East India Company Act, 1813.

80. No suit shall be instituted against the Secretary of State for India in Council, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a public officer, delivered



*(Part IV.—Suits in Particular Cases.)*

delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Exemption  
from arrest  
and personal  
appearance.

81. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

Execution of  
decree.

82. (1) Where the decree is against the Secretary of State for India in Council or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

**SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND  
NATIVE RULERS.**

When aliens  
may sue.

83. (1) Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India, as if they were subjects of His Majesty.

(2) No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

*Explanation.*

*(Part IV.—Suits in Particular Cases.)*

*Explanation.*—Every person residing in a foreign country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of sub-section (2), be deemed to be an alien enemy residing in a foreign country.

**84.** (1) A foreign State may sue in any Court of British India: When foreign States may sue.

Provided that such State has been recognized by His Majesty or by the Governor General in Council:

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor General in Council.

**85.** (1) Persons specially appointed by order of the Government at the request of any Sovereign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief. Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

(3) A

*(Part IV.—Suits in Particular Cases.)*

(3) A person appointed under this section may authorize or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

Suits against  
Princes,  
Chiefs, am-  
bassadors and  
envoys.

86. (1) Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of the Governor General in Council, certified by the signature of a Secretary to the Government of India, but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless it appears to the Government that the Prince, Chief, ambassador or envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) The Governor General in Council may, by notification in the Gazette of India, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions

(Part IV.—Suits in Particular Cases. Part V.—  
Special Proceedings.)

functions assigned by the foregoing sub-sections to the Governor General in Council and a Secretary to the Government of India, respectively.

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

87. A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State :

Style of  
Princes and  
Chiefs as  
parties to  
suits,

Provided that in giving the consent referred to in the foregoing section the Governor General in Council or the Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

#### INTERPLEADER.

88. Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself :

Where inter-  
pleader-suit  
may be in-  
stituted.

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

### PART V.

#### SPECIAL PROCEEDINGS.

##### ARBITRATION.

89. (1) Save in so far as is otherwise provided by the Indian Arbitration Act, 1899, or by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise,

Arbitration.

*(Part V.—Special Proceedings.)*

otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the Second Schedule.

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement or reference made before the commencement of this Code.

## SPECIAL CASE.

Power to  
state case for  
opinion of  
Court.

90. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

## SUITS RELATING TO PUBLIC MATTERS.

Public nui-  
sances.

91. (1) In the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Public  
charities.

92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

(a) removing

(Part V.—*Special Proceedings.* Part VI.—*Supplemental Proceedings.*)

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

of 1863. (2) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

93. The powers conferred by sections 91 and 92 on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

Exercise of powers of Advocate General outside Presidency-towns.

## PART VI.

### SUPPLEMENTAL PROCEEDINGS.

94. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

Supplemental proceedings.

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;
- (b) direct the defendant to furnish security to produce any property belonging to him and

*(Part VI.—Supplemental Proceedings.)*

and to place the same at the disposal of the Court or order the attachment of any property;

- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Compensation for obtaining arrest, attachment or injunction on insufficient grounds.

95. (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

- (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or
- (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him :

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

**PART VII.**

## (Part VII.—Appeals.)

## PART VII.

## APPEALS.

## APPEALS FROM ORIGINAL DECREES.

96. (1) Save where otherwise expressly provided Appeal from original decree. in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

97. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal Appeal from final decree where no appeal from preliminary decree. which may be preferred from the final decree.

98. (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges. Decision where appeal heard by two or more Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

99. No



## (Part VII.—Appeals.)

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

**99.** No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

## APPEALS FROM APPELLATE DECREES.

Second appeal.

**100.** (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:—

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

Second appeal on no other grounds.

**101.** No second appeal shall lie except on the grounds mentioned in section 100.

No second appeal in certain suits.

**102.** No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

Power of High Court to determine issues of fact.

**103.** In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal but not determined by the lower appellate Court.

*(Part VII.—Appeals.)*

## APPEALS FROM ORDERS.

**104.** (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force from no other orders:—

Orders from which appeal lies.

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court;
- (b) an order on an award stated in the form of a special case;
- (c) an order modifying or correcting an award;
- (d) an order filing or refusing to file an agreement to refer to arbitration;
- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
- (f) an order filing or refusing to file an award in an arbitration without the intervention of the Court;
- (g) an order under section 95;
- (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;
- (i) any order made under rules from which an appeal is expressly allowed by rules.

(2) No appeal shall lie from any order passed in appeal under this section.

**105.** (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

Other orders.

(2) Notwithstanding

*(Part VII.—Appeals.)*

(2) Notwithstanding anything contained in subsection (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

What Courts  
to hear  
appeals.

**106.** Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

## GENERAL PROVISIONS RELATING TO APPEALS.

Powers of  
Appellate  
Court.

**107.** (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Procedure in  
appeals from  
appellate  
decrees and  
orders.

**108.** The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

## APPEALS TO THE KING IN COUNCIL.

When appeals  
lie to King in  
Council.

**109.** Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals

*(Part VII.—Appeals.)*

appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

- (a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction;
- (b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction; and
- (c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

**110.** In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

**111.** Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council—

- (a) from the decree or order of one Judge of a High Court established under the Indian High Courts Act, 1861, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges

(Part VII.—*Appeals.* Part VIII.—*Reference, Review and Revision.*)

Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being; or

- (b) from any decree from which under section 102 no second appeal lies.

Savings.

**112.** (1) Nothing contained in this Code shall be deemed—

- (a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or
- (b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

## PART VIII.

### REFERENCE, REVIEW AND REVISION.

Reference to  
High Court.

**113.** Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

Review.

**114.** Subject as aforesaid, any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a

(Part VIII.—Reference, Review and Revision.  
Part IX.—Special Provisions relating to the  
Chartered High Courts.)

- (b) by a decree or order from which no appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

**115.** The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

Revision.

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

## PART IX.

### SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS.

**116.** This Part applies only to High Courts which are or may hereafter be established under the Indian High Courts Act, 1861.

24 & 25 Viot.,  
c. 104.

Part to apply only to certain High Courts.

**117.** Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to such High Courts.

Application of Code to High Courts.

**118.** Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs ;

Execution of decree before ascertainment of costs.

and,

(Part IX.—*Special Provisions relating to the Chartered High Courts.* Part X.—*Rules.*)

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Unauthorized persons not to address Court.

**119.** Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

Provisions not applicable to High Court in original civil or insolvent jurisdiction.

**120.** (1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

(2) Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

## PART X.

### RULES.

Effect of rules in First Schedule.

**121.** The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Power of certain High Courts to make rules.

**122.** High Courts established under the Indian High Courts Act, 1861, and the Chief Courts of the Punjab and Lower Burma, may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

24 & 25  
Vict., c. 104.

Constitution of Rule Committees in certain provinces.

**123.** (1) A Committee, to be called the Rule Committee, shall be constituted at each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon.

(2) Each such Committee shall consist of the following persons, namely :—

(a) three

*(Part X.—Rules.)*

- (a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or (in the Punjab or Burma) a Divisional Judge for three years,
- (b) a barrister practising in that Court,
- (c) an advocate (not being a barrister) or vakil or pleader enrolled in that Court,
- (d) a Judge of a Civil Court subordinate to the High Court, and
- (e) in the towns of Calcutta, Madras and Bombay, an attorney.

(3) The members of each such Committee shall be appointed by the Chief Justice or Chief Judge, who shall also nominate one of their number to be president :

Provided that, if the Chief Justice or Chief Judge elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two, and the Chief Justice or Chief Judge shall be the President of the Committee.

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice or Chief Judge in this behalf; and whenever any member retires, resigns, dies or ceases to reside in the province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice or Chief Judge may appoint another person to be a member in his stead.

(5) There shall be a Secretary to each such Committee, who shall be appointed by the Chief Justice or Chief Judge and shall receive such remuneration as may be provided in this behalf by the Governor General in Council or by the Local Government, as the case may be.



## (Part X.—Rules.)

Committee  
to report to  
High Court.

**124.** Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

Power of  
other High  
Courts to  
make rules.

**125.** High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions as the Governor General in Council may determine :

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

Rules subject  
to sanction.

**126.** Rules made under the foregoing provisions shall be subject to the previous sanction of the following authorities, namely :—

- (a) if the rule is made by a High Court established under the Indian High Courts Act, 1861, to the sanction of the authority prescribed by section 15 of that Act for rules made under that section; 24 & 25 Vict.,  
c. 104.
- (b) if the rule is made by any other High Court, to the sanction of the Local Government.

Publication  
of rules.

**127.** Rules so made and sanctioned shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

Matters for  
which rules  
may provide.

**128.** (1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject

*(Part X.—Rules.)*

subject thereto, may provide for any matters relating to the procedure of Civil Courts.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely :—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;
- (b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;
- (c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;
- (f) summary procedure—
  - (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—
    - on a contract express or implied ; or
    - on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
    - on a guarantee, where the claim against the

## (Part X.—Rules.)

the principal is in respect of a debt  
or a liquidated demand only ; or

on a trust; or

(ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;

(g) procedure by way of originating summons;

(h) consolidation of suits, appeals and other proceedings;

(i) delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

Power of  
Chartered  
High Courts  
to make  
rules as to  
their original  
civil proceed-  
ure.

**129.** Notwithstanding anything in this Code, any High Court established under the Indian High Courts Act, 1861, may make such rules not inconsistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

24 & 25  
Vict., c. 104.

Power of  
other High  
Courts to  
make rules  
as to matters  
other than  
procedure.

**130.** A High Court not established under the Indian High Courts Act, 1861, may, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might, under section 15 of that Act, make with respect to any such

24 & 25 Vict.,  
c. 104.

*(Part X.—Rules. Part XI.—Miscellaneous.)*

such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency-town.

**131.** Rules made in accordance with section 129 or section 130 shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the force of law. Publication of rules.

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## PART XI.

### MISCELLANEOUS.

**132.** (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court. Exemption of certain women from personal appearance.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

**133.** (1) The Local Government may, by notification in the local official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption. Exemption of other persons.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

**134.** The

## (Part XI.—Miscellaneous.)

Arrest other  
than in  
execution of  
decree.

**134.** The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

Exemption  
from arrest  
under civil  
process.

**135.** (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

Procedure  
where person  
to be arrested  
or property  
to be  
attached is  
outside  
district.

**136.** (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate  
to

*(Part XI.—Miscellaneous.)*

to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, or of the Chief Court of Lower Burma, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

137. (1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the Local Government otherwise directs.

Language of  
subordinate  
Courts.

(2) The Local Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is  
unacquainted

*(Part XI.—Miscellaneous.)*

unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

Power for Local Government to require evidence to be recorded in English.

**138.** (1) The Local Government may, by notification in the local official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under subsection (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

Oath on affidavit by whom to be administered.

**139.** In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer or other person whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath to the deponent.

Assessors in causes of salvage, etc.

**140.** (1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

**141.** The

*(Part XI.—Miscellaneous.)*

**141.** The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. Miscellaneous proceedings.

**142.** All orders and notices served on or given to any person under the provisions of this Code shall be in writing. Orders and notices to be in writing.

**143.** Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made : Postage.

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

**144.** (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal. Application for restitution.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

**145.** Where any person has become liable as surety— Enforcement of liability of surety.

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for



## (Part XI.—Miscellaneous.)

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47 :

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

Proceedings  
by or against  
representa-  
tives.

**146.** Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

Consent or  
agreement by  
persons under  
disability.

**147.** In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

Enlargement  
of time.

**148.** Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Power to  
make up  
deficiency of  
court-fees.

**149.** Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have  
the

*(Part XI.—Miscellaneous.)*

the same force and effect as if such fee had been paid in the first instance.

**150.** Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Transfer of business.

**151.** Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Saving of inherent powers of Court.

**152.** Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

Amendment of judgments, decrees or orders.

**153.** The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

General power to amend.

**154.** Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement.

Saving of present right of appeal.

**155.** The enactments mentioned in the Fourth Schedule are hereby amended to the extent specified in the fourth column thereof.

Amendment of certain Acts.

**156.** The enactments mentioned in the Fifth Schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeals.

**157.** Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII of 1859 or under

Continuance of orders under repealed enactments.

*(Part XI.—Miscellaneous.)*

under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

Reference to  
Code of Civil  
Procedure  
and other  
repealed  
enactments.

**158.** In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

## THE FIRST SCHEDULE.

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### ORDER I.

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#### *Parties to Suits.*

##### RULES.

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2. Power of Court to order separate trials.
3. Who may be joined as defendants.
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5. Defendant need not be interested in all the relief claimed.
6. Joinder of parties liable on same contract.
7. When plaintiff in doubt from whom redress is to be sought.
8. One person may sue or defend on behalf of all in same interest.
9. Misjoinder and nonjoinder.
10. Suit in name of wrong plaintiff.  
Court may strike out or add parties.  
Where defendant added, plaint to be amended.
11. Conduct of suit.
12. Appearance of one of several plaintiffs or defendants for others.
13. Objections as to nonjoinder or misjoinder.

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### ORDER II.

#### *Frame of Suit.*

1. Frame of suit.
2. Suit to include the whole claim.  
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Omission to sue for one of several reliefs.
3. Joinder of causes of action.
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5. Claims by or against executor, administrator or heir.
6. Power of Court to order separate trials.
7. Objections as to misjoinder.

### ORDER III.

## ORDER III.

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## RULES.

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2. Recognized agents.
3. Service of process on recognized agent.
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5. Service of process on pleader.
6. Agent to accept service.  
Appointment to be in writing and to be filed in Court.

## ORDER IV.

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1. Suit to be commenced by plaintiff.
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*Issue and Service of Summons.**Issue of Summons.*

1. Summons.
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7. Summons to order defendant to produce documents relied on by him.
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*Service of Summons.*

9. Delivery or transmission of summons for service.
10. Mode of service.
11. Service on several defendants.
12. Service to be on defendant in person when practicable, or on his agent.
13. Service on agent by whom defendant carries on business.

14. Service

## RULES.

14. Service on agent in charge in suits for immoveable property.
15. Where service may be on male member of defendant's family.
16. Person served to sign acknowledgment.
17. Procedure when defendant refuses to accept service, or cannot be found.
18. Endorsement of time and manner of service.
19. Examination of serving officer.
20. Substituted service.  
Effect of substituted service.  
Where service substituted, time for appearance to be fixed.
21. Service of summons where defendant resides within jurisdiction of another Court.
22. Service, within Presidency-towns and Rangoon, of summons issued by Courts outside.
23. Duty of Court to which summons is sent.
24. Service on defendant in prison.
25. Service where defendant resides out of British India and has no agent.
26. Service in foreign territory through Political Agent or Court.
27. Service on civil public officer or on servant of railway company or local authority.
28. Service on soldiers.
29. Duty of person to whom summons is delivered or sent for service.
30. Substitution of letter for summons.

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ORDER VI.*Pleadings generally.*

1. Pleading.
2. Pleading to state material facts and not evidence.
3. Forms of pleading.
4. Particulars to be given where necessary.
5. Further and better statement, or particulars.
6. Condition precedent.
7. Departure.
8. Denial of contract.
9. Effect of document to be stated.
10. Malice, knowledge, etc.
11. Notice.
12. Implied contract, or relation.
13. Presumptions of law.
14. Pleading to be signed.
15. Verification

## RULES.

15. Verification of pleadings.
16. Striking out pleadings.
17. Amendment of pleadings.
18. Failure to amend after order.

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ORDER VII.*Plaint.*

1. Particulars to be contained in plaint.
2. In money suits.
3. Where the subject-matter of the suit is immoveable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.
7. Relief to be specifically stated.
8. Relief founded on separate grounds.
9. Procedure on admitting plaint.  
Concise statements.
10. Return of plaint.  
Procedure on returning plaint.
11. Rejection of plaint.
12. Procedure on rejecting plaint.
13. Where rejection of plaint does not preclude presentation of fresh plaint.

*Documents relied on in plaint.*

14. Production of document on which plaintiff sues.  
List of other documents.
15. Statement in case of documents not in his possession or power.
16. Suits on lost negotiable instruments.
17. Production of shop-book.  
Original entry to be marked and returned.
18. Inadmissibility of document not produced when plaint filed.

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ORDER VIII.*Written Statement and Set-off.*

1. Written statement.
2. New facts must be specially pleaded.
3. Denial to be specific.
4. Evasive denial.
5. Specific denial.

6. Particulars

## RULES.

6. Particulars of set-off to be given in written statement.  
Effect of set-off.
7. Defence or set-off founded on separate grounds.
8. New ground of defence.
9. Subsequent pleadings.
10. Procedure when party fails to present written statement called for by Court.

## ORDER IX.

*Appearance of Parties and Consequence of Non-appearance.*

1. Parties to appear on day fixed in summons for defendant to appear and answer.
2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
3. Where neither party appears, suit to be dismissed.
4. Plaintiff may bring fresh suit or Court may restore suit to file.
5. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.
6. Procedure when only plaintiff appears.  
When summons duly served.  
When summons not duly served.  
When summons served, but not in due time.
7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.
8. Procedure where defendant only appears.
9. Decree against plaintiff by default bars fresh suit.
10. Procedure in case of non-attendance of one or more of several plaintiffs.
11. Procedure in case of non-attendance of one or more of several defendants.
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

*Setting aside Decrees ex parte.*

13. Setting aside decree *ex parte* against defendant.
14. No decree to be set aside without notice to opposite party.

## ORDER X.

*Examination of Parties by the Court.*

1. Ascertainment whether allegations in pleadings are admitted or denied.



**RULES.**

2. Oral examination of party, or companion of party.
3. Substance of examination to be written.
4. Consequence of refusal or inability of pleader to answer.

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**ORDER XI.***Discovery and Inspection.*

1. Discovery by interrogatories.
2. Particular interrogatories to be submitted.
3. Costs of interrogatories.
4. Form of interrogatories.
5. Corporations.
6. Objections to interrogatories by answer.
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing.
9. Form of affidavit in answer.
10. No exception to be taken.
11. Order to answer or answer further.
12. Application for discovery of documents.
13. Affidavit of documents.
14. Production of documents.
15. Inspection of documents referred to in pleading or affidavits.
16. Notice to produce.
17. Time for inspection when notice given.
18. Order for inspection.
19. Verified copies.
20. Premature discovery.
21. Non-compliance with order for discovery.
22. Using answers to interrogatories at trial.
23. Order to apply to minors.

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**ORDER XII.***Admissions.*

1. Notice of admission of case.
2. Notice to admit documents.
3. Form of notice.
4. Notice to admit facts.
5. Form of admissions.
6. Judgment on admissions.
7. Affidavit of signature.
8. Notice to produce documents.
9. Costs.

**ORDER XIII.**

## ORDER XIII.

*Production, Impounding and Return of Documents.*

## RULES.

1. Documentary evidence to be produced at first hearing.
2. Effect of non-production of documents.
3. Rejection of irrelevant or inadmissible documents.
4. Endorsements on documents admitted in evidence.
5. Endorsements on copies of admitted entries in books, accounts and records.
6. Endorsements on documents rejected as inadmissible in evidence.
7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may send for papers from its own records or from other Courts.
11. Provisions as to documents applied to material objects.

## ORDER XIV.

*Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.*

1. Framing of issues.
2. Issues of law and of fact.
3. Materials from which issues may be framed.
4. Court may examine witnesses or documents before framing issues.
5. Power to amend, and strike out, issues.
6. Questions of fact or law may by agreement be stated in form of issues.
7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

## ORDER XV.

*Disposal of the Suit at the first hearing.*

1. Parties not at issue.
2. One of several defendants not at issue.
3. Parties at issue.
4. Failure to produce evidence.

## ORDER XVI.

*Summoning and Attendance of Witnesses.*

1. Summons to attend to give evidence or produce documents.
2. Expenses

## RULES.

2. Expenses of witness to be paid into Court on applying for summons.  
Experts.  
Scale of expenses.
3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in.  
Expenses of witnesses detained more than one day.
5. Time, place and purpose of attendance to be specified in summons.
6. Summons to produce document.
7. Power to require persons present in Court to give evidence or produce document.
8. Summons how served.
9. Time for serving summons.
10. Procedure where witness fails to comply with summons.
11. If witness appears, attachment may be withdrawn.
12. Procedure if witness fails to appear.
13. Mode of attachment.
14. Court may of its own accord summon as witnesses strangers to suit.
15. Duty of persons summoned to give evidence or produce document.
16. When they may depart.
17. Application of rules 10 to 13.
18. Procedure where witness apprehended cannot give evidence or produce document.
19. No witness to be ordered to attend in person unless resident within certain limits.
20. Consequence of refusal of party to give evidence when called on by Court.
21. Rules as to witnesses to apply to parties summoned.

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ORDER XVII.*Adjournments.*

1. Court may grant time and adjourn hearing.  
Costs of adjournment.
2. Procedure if parties fail to appear on day fixed.
3. Court may proceed notwithstanding either party fails to produce evidence, etc.

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ORDER XVIII.*Hearing of the Suit and Examination of Witnesses.*

1. Right to begin.

2. Statement

**RULES.**

2. Statement and production of evidence.
3. Evidence where several issues.
4. Witnesses to be examined in open Court.
5. How evidence shall be taken in appealable cases.
6. When deposition to be interpreted.
7. Evidence under section 138.
8. Memorandum when evidence not taken down by Judge.
9. When evidence may be taken in English.
10. Any particular question and answer may be taken down.
11. Questions objected to and allowed by Court.
12. Remarks on demeanour of witnesses.
13. Memorandum of evidence in unappealable cases.
14. Judge unable to make such memorandum to record reasons of his inability.
15. Power to deal with evidence taken before another Judge.
16. Power to examine witness immediately.
17. Court may recall and examine witness.
18. Power of Court to inspect.

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**ORDER XIX.***Affidavits.*

1. Power to order any point to be proved by affidavit.
2. Power to order attendance of deponent for cross-examination.
3. Matters to which affidavits shall be confined.

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**ORDER XX.***Judgment and Decree.*

1. Judgment when pronounced.
2. Power to pronounce judgment written by Judge's predecessor.
3. Judgment to be signed.
4. Judgments of Small Cause Courts.  
Judgments of other Courts.
5. Court to state its decision on each issue.
6. Contents of decree.
7. Date of decree.
8. Procedure where Judge has vacated office before signing decree.

9. Decree

## RULES.

9. Decree for recovery of immoveable property.
10. Decree for delivery of moveable property.
11. Decree may direct payment by instalments.  
Order, after decree, for payment by instalments.
12. Decree for possession and mesne profits.
13. Decree in administration-suit.
14. Decree in pre-emption-suit.
15. Decree in suit for dissolution of partnership.
16. Decree in suit for account between principal and agent.
17. Special directions as to accounts.
18. Decree in suit for partition of property or separate possession of a share therein.
19. Decree when set-off is allowed.  
Appeal from decree relating to set-off.
20. Certified copies of judgment and decree to be furnished.

## ORDER XXI.

*Execution of Decrees and Orders.**Payment under Decree.*

1. Modes of paying money under decree.
2. Payment out of Court to decree-holder.

*Courts executing Decrees.*

3. Lands situate in more than one jurisdiction.
4. Transfer to Court of Small Causes.
5. Mode of transfer.
6. Procedure where Court desires that its own decree shall be executed by another Court.
7. Court receiving copies of decree, etc., to file same without proof.
8. Execution of decree or order by Court to which it is sent.
9. Execution by High Court of decree transferred by other Court.

*Application for execution.*

10. Application for execution.
11. Oral application.  
Written application.
12. Application for attachment of moveable property not in judgment-debtor's possession.
13. Application for attachment of immoveable property to contain certain particulars.

14. Power

## RULES.

14. Power to require certified extract from Collector's register in certain cases.
15. Application for execution by joint decree-holder.
16. Application for execution by transferee of decree.
17. Procedure on receiving application for execution of decree.
18. Execution in case of cross-decrees.
19. Execution in case of cross-claims under same decree.
20. Cross-decrees and cross-claims in mortgage-suits.
21. Simultaneous execution.
22. Notice to show cause against execution in certain cases.
23. Procedure after issue of notice.

*Process for execution.*

24. Process for execution.
25. Endorsement on process.

*Stay of execution.*

26. When Court may stay execution.  
Power to require security from, or impose conditions upon, judgment-debtor.
27. Liability of judgment-debtor discharged.
28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.
29. Stay of execution pending suit between decree-holder and judgment-debtor.

*Mode of execution.*

30. Decree for payment of money.
31. Decree for specific moveable property.
32. Decree for specific performance for restitution of conjugal rights or for an injunction.
33. Discretion of Court in executing decrees for restitution of conjugal rights.
34. Decree for execution of document, or endorsement of negotiable instrument.
35. Decree for immoveable property.
36. Decree for delivery of immoveable property when in occupancy of tenant.

*Arrest and detention in the civil prison.*

37. Discretionary power to permit judgment-debtor to show cause against detention in prison.
38. Warrant for arrest to direct judgment-debtor to be brought up.
39. Subsistence-allowance.

## RULES.

40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

*Attachment of property.*

41. Examination of judgment-debtor as to his property.  
42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.  
43. Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor.  
44. Attachment of agricultural produce.  
45. Provisions as to agricultural produce under attachment.  
46. Attachment of debt, share and other property not in possession of judgment-debtor.  
47. Attachment of share in moveables.  
48. Attachment of salary or allowances of public officer or servant of railway company or local authority.  
49. Attachment of partnership property.  
50. Execution of decree against firm.  
51. Attachment of negotiable instruments.  
52. Attachment of property in custody of Court or public officer.  
53. Attachment of decrees.  
54. Attachment of immoveable property.  
55. Removal of attachment after satisfaction of decree.  
56. Order for payment of coin or currency notes to party entitled under decree.  
57. Determination of attachment.

*Investigation of claims and objections.*

58. Investigation of claims to, and objections to attachment of, attached property.  
Postponement of sale.  
59. Evidence to be adduced by claimant.  
60. Release of property from attachment.  
61. Disallowance of claim to property attached.  
62. Continuance of attachment subject to claim of incumbrancer.  
63. Saving of suits to establish right to attached property.

*Sale generally.*

64. Power to order property attached to be sold and proceeds to be paid to person entitled.

65. Sales

## RULES.

65. Sales by whom conducted and how made.
66. Proclamation of sales by public auction.
67. Mode of making proclamation.
68. Time of sale.
69. Adjournment or stoppage of sale.
70. Saving of certain sales.
71. Defaulting purchaser answerable for loss on re-sale.
72. Decree-holder not to bid for or buy property without permission.

Where decree-holder purchases, amount of decree may be taken as payment.

73. Restriction on bidding or purchase by officers.

*Sale of moveable property.*

74. Sale of agricultural produce.
75. Special provisions relating to growing crops.
76. Negotiable instruments and shares in corporations.
77. Sale by public auction.
78. Irregularity not to vitiate sale, but any person injured may sue.
79. Delivery of moveable property, debts and shares.
80. Transfer of negotiable instruments and shares.
81. Vesting order in case of other property.

*Sale of immoveable property.*

82. What Courts may order sales.
83. Postponement of sale to enable judgment-debtor to raise amount of decree.
84. Deposit by purchaser and re-sale on default.
85. Time for payment in full of purchase-money.
86. Procedure in default of payment.
87. Notification on re-sale.
88. Bid of co-sharer to have preference.
89. Application to set aside sale on deposit.
90. Application to set aside sale on ground of irregularity or fraud.
91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.
92. Sale when to become absolute or be set aside.
93. Return of purchase-money in certain cases.
94. Certificate to purchaser.
95. Delivery of property in occupancy of judgment-debtor.
96. Delivery of property in occupancy of tenant.

*Resistance to delivery of possession to decree-holder or purchaser.*

97. Resistance or obstruction to possession of immoveable property.

98. Resistance



## RULES.

98. Resistance or obstruction by judgment-debtor.
99. Resistance or obstruction by *bonâ fide* claimant.
100. Dispossession by decree-holder or purchaser.
101. *Bonâ fide* claimant to be restored to possession.
102. Rules not applicable to transferee *lite pendente*.
103. Orders conclusive subject to regular suit.

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ORDER XXII.*Death, Marriage and Insolvency of Parties.*

1. No abatement by party's death, if right to sue survives.
2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.
3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.
4. Procedure in case of death of one of several defendants or of sole defendant.
5. Determination of question as to legal representative.
6. No abatement by reason of death after hearing.
7. Suit not abated by marriage of female party.
8. When plaintiff's insolvency bars suit.  
Procedure where assignee fails to continue suit or give security.
9. Effect of abatement or dismissal.
10. Procedure in case of assignment before final order in suit.
11. Application of Order to appeals.
12. Application of Order to proceedings.

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ORDER XXIII.*Withdrawal and Adjustment of Suits.*

1. Withdrawal of suit or abandonment of part of claim.
2. Limitation law not affected by first suit.
3. Compromise of suit.
4. Proceedings in execution of decrees not affected.

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ORDER XXIV.*Payment into Court.*

1. Deposit by defendant of amount in satisfaction of claim.
2. Notice of deposit.

3. Interest

## RULES.

3. Interest on deposit not allowed to plaintiff after notice.
4. Procedure where plaintiff accepts deposit as satisfaction in part.  
Procedure where he accepts it as satisfaction in full.

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ORDER XXV.*Security for Costs.*

1. When security for costs may be required from plaintiff.  
Residence out of British India.
2. Effect of failure to furnish security.

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ORDER XXVI.*Commissions.**Commissions to examine witnesses.*

1. Cases in which Court may issue commission to examine witness.
2. Order for commission.
3. Where witness resides within Court's jurisdiction.
4. Persons for whose examination commission may issue.
5. Commission or Request to examine witness not within British India.
6. Court to examine witness pursuant to commission.
7. Return of commission with depositions of witnesses.
8. When depositions may be read in evidence.

*Commissions for local investigations.*

9. Commissions to make local investigations.
10. Procedure of Commissioner.  
Report and depositions to be evidence in suit.  
Commissioner may be examined in person.

*Commissions to examine accounts.*

11. Commission to examine or adjust accounts.
12. Court to give Commissioner necessary instructions.  
Proceedings and report to be evidence.  
Court may direct further inquiry.

*Commissions to make partitions.*

13. Commission to make partition of immoveable property.

14. Procedure

## RULES.

## 14. Procedure of Commissioner.

*General provisions.*

15. Expenses of commission to be paid into Court.
  16. Powers of Commissioners.
  17. Attendance and examination of witnesses before Commissioner.
  18. Parties to appear before Commissioner.
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## ORDER XXVII.

*Suits by or against the Government or Public Officers in their official capacity.*

1. Suits by or against Government.
  2. Persons authorized to act for Government.
  3. Plaints in suits by or against Government.
  4. Agent for Government to receive process.
  5. Fixing of day for appearance on behalf of Government.
  6. Attendance of person able to answer questions relating to suit against Government.
  7. Extension of time to enable public officer to make reference to Government.
  8. Procedure in suits against public officer.
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## ORDER XXVIII.

*Suits by or against Military Men.*

1. Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.
  2. Persons so authorized may act personally or appoint pleader.
  3. Service on person so authorized, or on his pleader, to be good service.
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## ORDER XXIX.

*Suits by or against Corporations.*

1. Subscription and verification of pleading.
2. Service on corporation.
3. Power to require personal attendance of officer of corporation.

## ORDER XXX.

## RULES.

## ORDER XXX.

*Suits by or against Firms and Persons carrying on business in names other than their own.*

1. Suing of partners in name of firm.
2. Disclosure of partners' names.
3. Service.
4. Right of suit on death of partner.
5. Notice in what capacity served.
6. Appearance of partners.
7. No appearance except by partners.
8. Appearance under protest.
9. Suits between co-partners.
10. Suit against person carrying on business in name other than his own.

## ORDER XXXI.

*Suits by or against Trustees, Executors and Administrators.*

1. Representation of beneficiaries in suits concerning property vested in trustees, etc.
2. Joinder of trustees, executors and administrators.
3. Husband of married executrix not to join.

## ORDER XXXII.

*Suits by or against Minors and Persons of Unsound Mind.*

1. Minor to sue by next friend.
2. Where suit is instituted without next friend, plaint to be taken off the file.
3. Guardian for the suit to be appointed by Court for minor defendant.
4. Who may act as next friend or be appointed guardian for the suit.
5. Representation of minor by next friend or guardian for the suit.
6. Receipt by next friend or guardian for the suit of property under decree for minor.
7. Agreement or compromise by next friend or guardian for the suit.
8. Retirement of next friend.
9. Removal of next friend.
10. Stay of proceedings on removal, etc., of next friend.
11. Retirement, removal or death of guardian for the suit.
12. Course to be followed by minor plaintiff or applicant on attaining majority.

13. Where

**RULES.**

13. Where minor co-plaintiff attaining majority desires to repudiate suit.
14. Unreasonable or improper suit.
15. Application of rules to persons of unsound mind.
16. Saving for Princes and Chiefs.

**ORDER XXXIII.***Suits by Paupers.*

1. Suits may be instituted *in formâ pauperis*.
2. Contents of application.
3. Presentation of application.
4. Examination of applicant.  
If presented by agent, Court may order applicant to be examined by commission.
5. Rejection of application.
6. Notice of day for receiving evidence of applicant's pauperism.
7. Procedure at hearing.
8. Procedure if application admitted.
9. Dispaupering.
10. Costs where pauper succeeds.
11. Procedure where pauper fails.
12. Government may apply for payment of court-fees.
13. Government to be deemed a party.
14. Copy of decree to be sent to Collector.
15. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.
16. Costs.

**ORDER XXXIV.***Suits relating to Mortgages of Immoveable Property.*

1. Parties to suits for foreclosure, sale and redemption.
2. Preliminary decree in foreclosure-suit.
3. Final decree in foreclosure-suit.  
Power to enlarge time.  
Discharge of debt.
4. Preliminary decree in suit for sale.  
Power to decree sale in foreclosure-suit.
5. Final decree in suit for sale.
6. Recovery of balance due on mortgage.
7. Preliminary decree in redemption-suit.
8. Final decree in redemption-suit.  
Power to enlarge time.

9. Decree

## RULES.

9. Decree where nothing is found due or where mortgagee has been overpaid.
10. Costs of mortgagee subsequent to decree.
11. Right of mesne mortgagee to redeem and foreclose.
12. Sale of property subject to prior mortgage.
13. Application of proceeds.
14. Suit for sale necessary to bring mortgaged property to sale.
15. Charges.

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ORDER XXXV.*Interpleader.*

1. Complaint in interpleader-suit.
2. Payment of thing claimed into Court.
3. Procedure where defendant is suing plaintiff.
4. Procedure at first hearing.
5. Agents and tenants may not institute interpleader-suits.
6. Charge for plaintiff's costs.

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ORDER XXXVI.*Special Case.*

1. Power to state case for Court's opinion.
2. Where value of subject-matter must be stated.
3. Agreement to be filed and registered as suit.
4. Parties to be subject to Court's jurisdiction.
5. Hearing and disposal of case.

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ORDER XXXVII.*Summary Procedure on Negotiable Instruments.*

1. Application of Order.
2. Institution of summary suits upon bills of exchange, etc.
3. Defendant showing defence on merits to have leave to appear.
4. Power to set aside decree.
5. Power to order bill, etc., to be deposited with officer of Court.
6. Recovery of cost of noting non-acceptance of dishonoured bill or note.
7. Procedure in suits.

## ORDER XXXVIII.

## RULES.

## ORDER XXXVIII.

*Arrest and Attachment before judgment.**Arrest before judgment.*

1. Where defendant may be called upon to furnish security for appearance.
2. Security.
3. Procedure on application by surety to be discharged.
4. Procedure where defendant fails to furnish security or find fresh security.

*Attachment before judgment.*

5. Where defendant may be called upon to furnish security for production of property.
6. Attachment where cause not shown or security not furnished.
7. Mode of making attachment.
8. Investigation of claim to property attached before judgment.
9. Removal of attachment when security furnished or suit dismissed.
10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.
11. Property attached before judgment not to be re-attached in execution of decree.
12. Agricultural produce not attachable before judgment.

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ORDER XXXIX.*Temporary Injunctions and Interlocutory Orders.**Temporary injunctions.*

1. Cases in which temporary injunction may be granted.
2. Injunction to restrain repetition or continuance of breach.
3. Before granting injunction, Court to direct notice to opposite party.
4. Order for injunction may be discharged, varied or set aside.
5. Injunction to corporation binding on its officers.

*Interlocutory orders.*

6. Power to order interim sale.

7. Detention,

## RULES.

7. Detention, preservation, inspection, etc., of subject-matter of suit.
8. Application for such orders to be after notice.
9. When party may be put in immediate possession of land the subject-matter of suit.
10. Deposit of money, etc., in Court.

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ORDER XL.*Appointment of Receivers.*

1. Appointment of receivers.
2. Remuneration.
3. Duties.
4. Enforcement of receiver's duties.
5. When Collector may be appointed receiver.

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ORDER XLI.*Appeals from Original Decrees.*

1. Form of appeal.  
What to accompany memorandum.  
Contents of memorandum.
2. Grounds which may be taken in appeal.
3. Rejection or amendment of memorandum.
4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

*Stay of proceedings and of execution.*

5. Stay by Appellate Court.  
Stay by Court which passed the decree.
6. Security in case of order for execution of decree appealed from.
7. No security to be required from the Government or a public officer in certain cases.
8. Exercise of powers in appeal from order made in execution of decree.

*Procedure on admission of appeal.*

9. Registry of memorandum of appeal.  
Register of appeals.
10. Appellate Court may require appellant to furnish security for costs.  
Where appellant resides out of British India.
11. Power



## RULES.

11. Power to dismiss appeal without sending notice to Lower Court.
12. Day for hearing appeal.
13. Appellate Court to give notice to Court whose decree appealed from.  
Transmission of papers to Appellate Court.  
Copies of exhibits in Court whose decree appealed from.
14. Publication and service of notice of day for hearing appeal.  
Appellate Court may itself cause notice to be served.
15. Contents of notice.

*Procedure on hearing.*

16. Right to begin.
17. Dismissal of appeal for appellant's default.  
Hearing appeal *ex parte*.
18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.
19. Re-admission of appeal dismissed for default.
20. Power to adjourn hearing, and direct persons appearing interested to be made respondents.
21. Re-hearing on application of respondent against whom *ex parte* decree made.
22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.  
Form of objection and provisions applicable thereto.
23. Remand of case by Appellate Court.
24. Where evidence on record sufficient, Appellate Court may determine case finally.
25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.
26. Findings and evidence to be put on record.  
Objections to finding.  
Determination of appeal.
27. Production of additional evidence in Appellate Court.
28. Mode of taking additional evidence.
29. Points to be defined and recorded.

*Judgment in appeal.*

30. Judgment when and where pronounced.
31. Contents, date and signature of judgment.
32. What judgment may direct.
33. Power of Court of Appeal.
34. Dissent to be recorded.

## RULES.

*Decree in appeal.*

35. Date and contents of decree.  
Judge dissenting from judgment need not sign decree.
36. Copies of judgment and decree to be furnished to parties.
37. Certified copy of decree to be sent to Court whose decree appealed from.

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**ORDER XLII.***Appeals from Appellate Decrees.*

1. Procedure.

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**ORDER XLIII.***Appeals from Orders.*

1. Appeals from orders.
2. Procedure.

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**ORDER XLIV.***Pauper Appeals.*

1. Who may appeal as pauper.  
Procedure on application for admission of appeal.
2. Inquiry into pauperism.

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2. Application to Court whose decree complained of
3. Certificate as to value or fitness.
4. Consolidation of suits.
5. Remission of dispute to Court of first instance.
6. Effect of refusal of certificate.
7. Security and deposit required on grant of certificate.
8. Admission of appeal and procedure thereon.
9. Revocation of acceptance of security.
10. Power to order further security or payment.
11. Effect of failure to comply with order.
12. Refund of balance deposit.
13. Powers of Court pending appeal.

14. Increase

**RULES.**

14. Increase of security found inadequate.
15. Procedure to enforce orders of King in Council.
16. Appeal from order relating to execution.

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4. Costs of reference to High Court.
5. Power to alter, etc., decree of Court making reference.
6. Power to refer to High Court questions as to jurisdiction in small causes.
7. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

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1. Application for review of judgment.
2. To whom applications for review may be made.
3. Form of applications for review.
4. Application where rejected.  
Application where granted.
5. Application for review in Court consisting of two or more Judges.
6. Application where rejected.
7. Order of rejection not appealable.  
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9. Bar of certain applications.

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Costs of service.

2. Orders

## RULES.

2. Orders and notices how served.
3. Use of forms in appendices.

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2. Saving in respect of Chartered High Courts.
3. Application of rules.

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ORDER L.*Provincial Small Cause Courts.*

1. Provincial Small Cause Courts.

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ORDER LI.*Presidency Small Cause Courts.*

1. Presidency Small Cause Courts.

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1. Titles of suits.
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3. Plaints.
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## B.—PROCESS.

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## D.—DECREES.

## E.—EXECUTION.

## F.—SUPPLEMENTAL PROCEEDINGS.

## G.—APPEAL, REFERENCE AND REVIEW.

## H.—MISCELLANEOUS.

## THE FIRST SCHEDULE.

### ORDER I.

#### *Parties to Suits.*

Who may be  
joined as  
plaintiffs.

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

Power of  
Court to  
order separate trials.

2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

Who may be  
joined as  
defendants.

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.

Court may  
give judgment for or  
against one or  
more of joint  
parties.

4. Judgment may be given without any amendment—

- (a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;
- (b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Defendant  
need not be  
interested in  
all the relief  
claimed.  
Joinder of  
parties liable  
on same contract.

5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

When plaintiff in doubt  
from whom  
redress is to  
be sought.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

8. (1) Where

*(The First Schedule.)**(Order I.—Parties to Suits.)*

8. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

One person may sue or defend on behalf of all in same interest.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

9. No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Misjoinder and nonjoinder.

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Suit in name of wrong plaintiff.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Court may strike out or add parties.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and plaint shall be added.

Where defendant added, plaint to be amended.

*(The First Schedule.)**(Order II.—Frame of Suit.)*

and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons. XV of 1877

Conduct of  
suit

11. The Court may give the conduct of the suit to such person as it deems proper.

Appearance  
of one of se-  
veral plaint-  
iffs or defend-  
ants for  
others.

12. (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

Objections as  
to nonjoin-  
der or mis-  
joinder.

13. All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

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## ORDER II.

*Frame of Suit.*

Frame of suit.

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

Suit to in-  
clude the  
whole claim.

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relinquish-  
ment of part  
of claim.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Omission to  
sue for one  
of several  
reliefs.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs;

## (The First Schedule.)

## (Order II.—Frame of Suit.)

reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

*Explanation.*—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

*Illustration.*

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

3. (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit. Joinder of causes of action.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except— Only certain claims to be joined for recovery of immoveable property.

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir. Claims by or against executor, administrator or heir.

trator



*(The First Schedule.)**(Order III.—Recognized Agents and Pleadors.)*

trator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Power of  
Court to order  
separate  
trials.

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

Objections as  
to misjoinder.

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

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### ORDER III.

*Recognized Agents and Pleadors.*

Appearances,  
etc., may be  
in person, by  
recognized  
agent or by  
pleader.

1. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

Recognized  
agents.

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Service of  
process on  
recognized  
agent.

3. (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The

*(The First Schedule.)**(Order IV.—Institution of Suits.)*

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

4. (1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorized by power-of-attorney to act in this behalf. Appointment of pleader.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.

4 & 25  
Act c. 104

(3) No advocate of any High Court established under the Indian High Courts Act, 1861, or of any Chief Court, and no advocate of any other High Court who is a barrister shall be required to present any document empowering him to act.

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person. Service of process on pleader.

6. (1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process. Agent to accept service.

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court. Appointment to be in writing and to be filed in Court.

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## ORDER IV.

*Institution of Suits.*

1. (1) Every suit shall be instituted by presenting a complaint to the Court or such officer as it appoints in this behalf. Suit to be commenced by plaintiff.

(2) Every

*(The First Schedule.)**(Order V.—Issue and Service of Summons.)*

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

Register of  
suits.

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

## ORDER V.

*Issue and Service of Summons.**Issue of Summons.*

Summons.

1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Copy or state-  
ment annexed  
to summons.  
Court may  
order defend-  
ant or plain-  
tiff to appear  
in person.

2. Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to  
be ordered  
to appear in  
person unless  
resident with-  
in certain  
limits.

4. No party shall be ordered to appear in person unless he resides—

(a) within

*(The First Schedule.)**(Order V.—Issue and Service of Summons.)*

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Summons to be either to settle issues or for final disposal.

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Fixing day for appearance of defendant.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

Summons to order defendant to produce documents relied on by him.

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

*Service of Summons.*

9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

Delivery or transmission of summons for service.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

**10. Service**

*(The First Schedule.)**(Order V.—Issue and Service of Summons.)*

Mode of service.

**10.** Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

**11.** Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

Service to be on defendant in person when practicable or on his agent.

**12.** Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

**13.** (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

Service on agent in charge in suits for immoveable property.

**14.** Where in a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Where service may be on male member of defendant's family.

**15.** Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

*Explanation.*—A servant is not a member of the family within the meaning of this rule.

Person served to sign acknowledgment.

**16.** Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept

**17.** Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence,

*(The First Schedule.)**(Order V.—Issue and Service of Summons.)*

diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

service, or  
cannot be  
found.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Endorsement  
of time and  
manner of  
service.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Examination  
of serving  
officer.

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Substituted  
service.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Effect of sub-  
stituted ser-  
vice.

(3) Where service is substituted by order of the Court, ~~the~~ Where service substituted,

*(The First Schedule.)**(Order V.—Issue and Service of Summons.)*

time for a p-  
pearance to  
be fixed.

Service of  
summons  
where defen-  
dant resides  
within juris-  
diction of  
another Court.

Service with-  
in Presidency  
towns and  
Rangoon, of  
summons is-  
sued by  
Courts out-  
side.

Duty of  
Court to  
which sum-  
mons is sent.

Service on  
defendant in  
prison.

Service where  
defendant  
resides out of  
British India  
and has no  
agent.

Service in  
foreign terri-  
tory through  
Political  
Agent or  
Court.

the Court shall fix such time for the appearance of the defendant as the case may require.

**21.** A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

**22.** Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

**23.** The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

**24.** Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

**25.** Where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

**26.** Where—

(a) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor General in Council, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(b) the Governor General in Council has, by notification in the Gazette of India, declared that any summons so issued may be served by any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid,

the

*(The First Schedule.)**(Order V.—Issue and Service of Summons.)*

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

27. Where the defendant is a public officer (not belonging to His Majesty's military or naval forces or His Majesty's Indian Marine Service), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Service on civil public officer or on servant of railway company or local authority.

28. Where the defendant is a soldier, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Service on soldiers.

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

Duty of person to whom summons is delivered or sent for service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

Substitution of letter for summons.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where

the



*(The First Schedule.)**(Order VI.—Pleadings generally.)*

the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

## ORDER VI.

*Pleadings generally.*

- leading. 1. "Pleading" shall mean plaint or written statement.
- Pleading to state material facts and not evidence. 2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.
- Forms of pleading. 3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.
- Particulars to be given where necessary. 4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.
- Further and better statement, or particulars. 5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.
- Condition precedent. 6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.
- Departure. 7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.
- Denial of contract. 8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the

*(The First Schedule.)**(Order VI.—Pleadings generally.)*

the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material. Effect of document to be stated.

10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. Malice, knowledge, &c.

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material. Notice.

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative. Implied contract, or relation.

13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (*e.g.*, consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim). Presumptions of law.

14. Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. Pleading to be signed.

15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the

foot

*(The First Schedule.)**(Order VII.—Plaint.)*

foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

Striking out  
pleadings.

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

Amendment  
of pleadings.

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Failure to  
amend after  
order.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

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## ORDER VII.

### *Plaint.*

Particulars to  
be contained  
in plaint.

1. The plaint shall contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where

*(The First Schedule.)**(Order VII.—Plaint.)*

- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

2. Where the plaintiff seeks the recovery of money, the plaintiff shall state the precise amount claimed: In money suits.

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaintiff shall state approximately the amount sued for.

3. Where the subject-matter of the suit is immoveable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers. Where the subject-matter of the suit is immoveable property.

4. Where the plaintiff sues in a representative character the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it. When plaintiff sues as representative.

5. The plaintiff shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand. Defendant's interest and liability to be shown.

6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed. Grounds of exemption from limitation law.

7. Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule Relief to be specifically stated.

*(The First Schedule.)**(Order VII.—Plaint.)*

rule shall apply to any relief claimed by the defendant in his written statement.

**Relief founded on separate grounds.** 8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

**Procedure on admitting plaint.** 9. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

**Return of plaint.** 10. (1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

**Procedure on returning plaint.** (2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

**Rejection of plaint.** 11. The plaint shall be rejected in the following cases :—

(a) where it does not disclose a cause of action :

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so :

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped,

*(The First Schedule.)**(Order VII.—Plaint.)*

stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(d) where the suit appears from the statement in the plaint to be barred by any law.

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order. Procedure on rejecting plaint.

13. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Where rejection of plaint does not preclude presentation of fresh plaint.

*Documents relied on in plaint.*

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint. Production of document on which plaintiff sues.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint. List of other documents.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is. Statement in case of documents not in his possession or power.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint. Suits on lost negotiable instruments.

17. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies. Production of shop-book.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of Original entry to be marked and returned.

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of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of document not produced when plaint filed.

18. (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

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### ORDER VIII.

*Written Statement and Set-off.*

Written statement.

1. The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

New facts must be specially pleaded.

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

Denial to be specific.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Evasive denial.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with

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divers circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Specific denial.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

6. (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off. Particulars of set-off to be given in written statement.

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree. Effect of set-off.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

*Illustrations.*

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set off.

(e) A sues



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(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

Defence or  
set-off found-  
ed on separ-  
ate grounds.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

New ground  
of defence.

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

Subsequent  
pleadings.

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

Procedure  
when party  
fails to pre-  
sent written  
statement  
called for  
by Court.

10. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

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## ORDER IX.

### *'Appearance of Parties and Consequence of Non-appearance.'*

Parties to ap-  
pear on day  
fixed in sum-  
mons for de-  
fendant to  
appear and  
answer.

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

2. Where

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2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed :

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

Where neither party appears, suit to be dismissed.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Plaintiff may bring fresh suit or Court may restore suit to file.

5. (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may make an order that the suit be dismissed as against such defendant.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

6. (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

Procedure when only plaintiff appears.

(a) if it is proved that the summons was duly served, the Court may proceed *ex parte*;

When summons duly served.

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

When summons not duly served.

(c) if it is proved that the summons was served on

When summons served but not in due time.

the

## (The First Schedule.)

## (Order IX.—Appearance of Parties and Consequence of Non-appearance.)

the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance. Procedure where defendant only appears.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Decree against plaintiff by default bars fresh suit.

9. (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Procedure in case of non-attendance of one or more of several plaintiffs.

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in

11. Where there are more defendants than one, and one

or

*(The First Schedule.)**(Order X.—Examination of Parties by the Court.)*

or more of them appear and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

*Setting aside Decrees ex parte.*

13. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Setting aside decree *ex parte* against defendant.

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

No decree to be set aside without notice to opposite party.

**ORDER X.***Examination of Parties by the Court.*

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in pleadings are admitted or denied.

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court

Oral examination of party or companion of party.

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Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be written. Consequence of refusal or inability of pleader to answer.

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

4. (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

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## ORDER XI.

*Discovery and Inspection.*

Discovery by interrogatories.

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Particular interrogatories to be submitted.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider

*(The First Schedule.)**(Order XI.—Discovery and Inspection.)*

consider necessary either for disposing fairly of the suit or for saving costs.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault. Costs of interrogatories.

4. Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require. Form of interrogatories.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly. Corporations.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bonâ fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer. Objections to interrogatories by answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories. Setting aside and striking out interrogatories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow. Affidavit in answer, filing.

9. An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require. Form of affidavit in answer.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court. No exception to be taken.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order to answer or answer further. Order to answer or answer further.

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## (Order XI.—Discovery and Inspection.)

the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Court may direct.

Application  
for discovery  
of docu-  
ments

**12.** Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Affidavit of  
documents.

**13.** The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

Production of  
documents.

**14.** It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Inspection of  
documents  
referred to in  
pleadings or  
affidavits.

**15.** Every party to a suit shall be entitled, at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

**16.** Notice

*(The First Schedule.)**(Order XI.—Discovery and Inspection.)*

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require. Notice to produce.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require. Time for inspection when notice given.

18. (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs. Order for inspection.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

19. (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, Verified copies.



*(The First Schedule.)**(Order XI.—Discovery and Inspection.)*

entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Premature  
discovery.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Non-compliance with  
order for  
discovery.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

Using  
answers to

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer

*(The First Schedule.)**(Order XII.—Admissions.)*

answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in. interrogatories at trial.

23. This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability. Order to apply to minors.

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## ORDER XII.

*Admissions.*

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. Notice of admission of case.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense. Notice to admit documents.

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require. Form of notice.

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not

*(The First Schedule.)**(Order XIII.—Production, Impounding and Return of Documents.)*

as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Form of admissions.

5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

Judgment on admissions.

6. Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment, as the Court may think just.

Affidavit of signature.

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

Notice to produce documents.

8. Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Costs.

9. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

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### ORDER XIII.

#### *Production, Impounding and Return of Documents.*

Documentary evidence to be produced at first hearing.

1. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The

*(The First Schedule.)**(Order XIII.—Production, Impounding and Return of Documents.)*

(2) The Court shall receive the documents so produced; provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

*Effect of non-production of documents.*

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

*Rejection of irrelevant or inadmissible documents.*

4. (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

*Endorsements on documents admitted in evidence.*

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

*Endorsements on copies of admitted entries in books, accounts and records.*

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(a) where

*(The First Schedule.)**(Order XIII.—Production, Impounding and Return of Documents.)*

- (a) where the record, book or account is produced on behalf of a party, then by that party, or
- (b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Endorsements on documents rejected as inadmissible in evidence.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Recording of admitted and return of rejected documents.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Court may order any document to be impounded.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Return of admitted documents.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

- (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and
- (b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been

*(The First Schedule.)**(Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.)*

been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

10. (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Court may send for papers from its own records or from other Courts.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

Provisions as to documents applied to material objects.

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### ORDER XIV.

#### *Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.*

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Framing of issues.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right

right

*(The First Schedule.)**(Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.)*

right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Issues of law  
and of fact.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Materials  
from which  
issues may  
be framed.

3. The Court may frame the issues from all or any of the following materials:—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

Court may  
examine wit-  
nesses or do-  
cuments be-  
fore framing  
issues.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the  
person

*(The First Schedule.)**(Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.)*

person in whose possession or power it is by summons or other process.

5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

Power to amend, and strike out, issues.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

Questions of fact or law may by agreement be stated in form of issues.

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and



*(The First Schedule.)**(Order XV.—Disposal of the Suit at the first hearing.)*

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

## ORDER XV.

*Disposal of the Suit at the first hearing.*

Parties not  
at issue.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

One of several  
defendants not at  
issue.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

Parties at  
issue.

3. (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

Failure to  
produce evi-  
dence.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

## ORDER XVI.

*(The First Schedule.)**(Order XVI.—Summoning and Attendance of Witnesses.)*

## ORDER XVI.

*Summoning and Attendance of Witnesses.*

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Summons to attend to give evidence or produce documents.

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of witness to be paid into Court on applying for summons.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Experts.

(3) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

Scale of expenses.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Tender of expenses to witness.

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Procedure where insufficient sum paid in.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be

Expenses of witnesses detained more than one day.

*(The First Schedule.)**(Order XVI.—Summoning and Attendance of Witnesses.)*

be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Time, place and purpose of attendance to be specified in summons.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Summons to produce document.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence or produce document. Summons how served.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Time for serving summons.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Procedure where witness fails to comply with summons.

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally

*(The First Schedule.)**(Order XVI.—Summoning and Attendance of Witnesses.)*

tionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12 :

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

**11.** Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

If witness appears, attachment may be withdrawn.

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

**12.** The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any :

Procedure if witness fails to appear.

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

**13.** The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Mode of attachment.

**14. Subject**

*(The First Schedule.)**(Order XVI.—Summoning and Attendance of Witnesses.)*

Court may of its own accord summon as witnesses strangers to suit.

**14.** Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

**15.** Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

When they may depart.

**16.** (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Application of rules 10 to 13.

**17.** The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Procedure where witness apprehended cannot give evidence or produce document.

**18.** Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

No witness to be ordered to attend in person unless resident within certain limits.

**19.** No one shall be ordered to attend in person to give evidence unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without

*(The First Schedule.)**(Order XVII.—Adjournments.)*

- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Consequence of refusal of party to give evidence when called on by Court.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

Rules as to witnesses to apply to parties summoned.

## ORDER XVII.

*Adjournments.*

1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Court may grant time and adjourn hearing.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Procedure if parties fail to appear on day fixed.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary

Court may proceed notwithstanding either party to

*(The First Schedule.)**(Order XVIII.—Hearing of the Suit and Examination of Witnesses.)*

fails to produce evidence, etc,

to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

## ORDER XVIII.

*Hearing of the Suit and Examination of Witnesses.*

Right to begin.

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Statement and production of evidence.

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

Evidence where several issues.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

How evidence shall be taken in appealable cases.

5. In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that

of

*(The First Schedule.)**(Order XVIII.—Hearing of the Suit and Examination of Witnesses.)*

of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

6. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given. When deposition to be interpreted.

7. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule. Evidence under section 138.

8. Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record. Memorandum when evidence not taken down by Judge.

9. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down. When evidence may be taken in English.

10. The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing. Any particular question and answer may be taken down.

11. Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon. Questions objected to and allowed by Court.

12. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination. Remarks on demeanour of witnesses.

13. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record. Memorandum of evidence in unappealable cases.

14. (1) Where



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Judge unable to make such memorandum to record reasons of his inability.

**14.** (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

(2) Every memorandum so made shall form part of the record.

Power to deal with evidence taken before another Judge.

**15.** (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

Power to examine witness immediately.

**16.** (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner herein-before provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

Court may recall and examine witness.

**17.** The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Power of Court to inspect.

**18.** The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

**ORDER XIX.**

*(The First Schedule.)**(Order XIX.—Affidavits. Order XX.—Judgment and Decree.)*

## ORDER XIX.

*Affidavits.*

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable: Power to order any point to be proved by affidavit.

Provided that where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent. Power to order attendance of deponent for cross-examination.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

3. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated. Matters to which affidavits shall be confined.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

## ORDER XX.

*Judgment and Decree.*

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders. Judgment when pronounced.

2. A Judge may pronounce a judgment written but not pronounced by his predecessor. Power to pronounce judgment written by Judge's predecessor.

3. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review. Judgment to be signed.

4. (1) Judgments

*(The First Schedule.)**(Order XX.—Judgment and Decree.)*

Judgments of  
Small Cause  
Courts.

4. (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

Judgments of  
other Courts.

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Court to  
state its deci-  
sion on each  
issue.

5. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Contents of  
decree.

6. (1) The decree shall agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

Date of  
decree.

7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Procedure  
where Judge  
has vacated  
office before  
signing  
decree.

8. Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

Decree for  
recovery of  
immoveable  
property.

9. Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for  
delivery of  
moveable  
property.

10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree may  
direct pay-  
ment by in-  
stalments.

11. (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments,

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instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Order, after decree, for payment by instalments.

12. (1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree—

Decree for possession and mesne profits.

- (a) for the possession of the property;
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
  - (i) the delivery of possession to the decree-holder,
  - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or
  - (iii) the expiration of three years from the date of the decree,

whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

13. (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

Decree in administration-suit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future

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future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration-suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Decree in pre-emption-suit.

14. (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

- (a) specify a day on or before which the purchase-money shall be so paid, and
- (b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,—

- (a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and,
- (b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

Decree in suit for dissolution of partnership.

15. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have

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have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Decree in suit for account between principal and agent.

17. The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Special directions as to accounts.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

Decree in suit for partition of property or separate possession of a share therein.

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

19. (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Decree when set-off is allowed.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

Appeal from decree relating to set-off.

(3) The

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(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

Certified  
copies of  
judgment and  
decree to be  
furnished.

20. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

**ORDER XXI.***Execution of Decrees and Orders.**Payment under Decree.*

Modes of pay-  
ing money  
under decree.

1. (1) All money payable under a decree shall be paid as follows, namely:—

(a) into the Court whose duty it is to execute the decree; or

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder.

Payment out  
of Court to  
decree-holder.

2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

*Courts executing Decrees.*

Lands situate  
in more than  
one jurisdic-  
tion.

3. Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

4. Where

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4. Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

Transfer to  
Court of  
Small Causes.

5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Mode of trans-  
fer.

6. The Court sending a decree for execution shall send—

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Procedure  
where Court  
desires that  
its own de-  
cree shall be  
executed by  
another  
Court.

7. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Court receiv-  
ing copies of  
decree, etc.,  
to file same  
without proof.

8. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

Execution of  
decree or  
order by  
Court to  
which it is  
sent.

9. Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Execution by  
High Court  
of decree  
transferred  
by other  
Court.

*Application*



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for execution.

10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Oral applica-  
tion.

11. (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

Written ap-  
plication

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:—

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of the costs (if any) awarded;
- (i) the name of the person against whom execution of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether—

(i) by

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- (i) by the delivery of any property specifically decreed;
- (ii) by the attachment and sale, or by the sale without attachment, of any property;
- (iii) by the arrest and detention in prison of any person;
- (iv) by the appointment of a receiver;
- (v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

**12.** Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property not in judgment-debtor's possession.

**13.** Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot—

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and
- (b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Application for attachment of immovable property to contain certain particulars.

**14.** Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Power to require certified extract from Collector's register in certain cases.

**15.** (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

Application for execution by joint decree-holder.

(2) Where

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(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application  
for execution  
by transferee  
of decree.

**16.** Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Procedure on  
receiving ap-  
plication for  
execution of  
decree.

**17. (1)** On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application :

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

Execution in  
case of cross-  
decrees.

**18. (1)** Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of

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of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

- (a) if the two sums are equal, satisfaction shall be entered upon both decrees; and
- (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless—

- (a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

*Illustrations.*

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

**19.** Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

Execution in case of cross-claims under same decree.

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and,

(b) if

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- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Cross-decrees  
and cross-  
claims in  
mortgage-  
suits.  
Simultaneous  
execution.

**20.** The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

**21.** The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Notice to  
show cause  
against exe-  
cution in cer-  
tain cases.

**22.** (1) Where an application for execution is made—

- (a) more than one year after the date of the decree or  
(b) against the legal representative of a party to the decree,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him :

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

Procedure  
after issue of  
notice.

**23.** (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

*Process*

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)**Process for execution.*

24. (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree. Process for execution.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

25. (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court. Endorsement on process.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

*Stay of execution.*

26. (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto. When Court may stay execution.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, Power to require security from, or impose conditions upon,

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)*

judgment-debtor.

debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of judgment-debtor discharged.

**27.** No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

Order of Court which passed decree or of appellate Court to be binding upon Court applied to. Stay of execution pending suit between decree-holder and judgment-debtor.

**28.** Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

**29.** Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

*Mode of execution.*

Decree for payment of money.

**30.** Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Decree for specific moveable property.

**31.** (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)*

been made, or, if made, has been refused, the attachment shall cease.

**32. (1)** Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison, or by the attachment of his property, or by both.

Decree for specific performance, for restitution of conjugal rights, or for an injunction.

**(2)** Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

**(3)** Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

**(4)** Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

**(5)** Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

*Illustration.*

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion.

B may



*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)*

B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

Discretion of Court in executing decrees for restitution of conjugal rights.

**33.** (1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree for the restitution of conjugal rights or at any time afterwards, may order that the decree shall not be executed by detention in prison.

(2) Where the Court has made an order under sub-rule (1) and the decree-holder is the wife, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

Decree for execution of document, or endorsement of negotiable instrument.

**34.** (1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)*

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:—

“ C. D., Judge of the Court of  
(*or as the case may be*), for A. B., in a suit by E. F. against  
A. B.”,

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

35. (1) Where a decree is for the delivery of any im- Decree for  
immovable  
property.  
moveable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of im-  
moveable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Where a decree is for the delivery of any immove- Decree for  
delivery of  
immovable  
property  
when in occu-  
pancy of ten-  
ant.  
able property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

*Arrest*

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)**Arrest and detention in the civil prison.*

Discretion-  
ary power to  
permit judg-  
ment-debtor  
to show cause  
against deten-  
tion in pri-  
son.

**37.** (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Warrant for  
arrest to  
direct judg-  
ment-debtor  
to be brought  
up.

**38.** Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Subsistence-  
allowance.

**39.** (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57 or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

**Provided**

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)*

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

40. (1) Where a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be.

Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

(2) Before making an order under sub-rule (1), the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely:—

- (a) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account;
- (b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree;
- (c) any undue preference given by the judgment-debtor to any of his other creditors;
- (d) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it;
- (e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree.

(3) While

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(3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, in its discretion, order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) Where the Court does not make an order under sub-rule (1), it shall cause the judgment debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison.

*Attachment of property.*

Examination  
of judgment-  
debtor as to  
his property.

**41.** Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

- (a) the judgment-debtor, or
- (b) in the case of a corporation, any officer thereof, or
- (c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

Attachment  
in case of de-  
cree for rent  
or mesne pro-  
fits or other  
matter, am-  
ount of which  
to be subse-  
quently deta-  
mined.

**42.** Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Attachment  
of moveable  
property  
other than  
agricultural  
produce, in  
possession of  
judgment-  
debtor.

**43.** Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping

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it in custody is likely to exceed its value, the attaching officer may sell it at once.

44. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,— Attachment of agricultural produce.

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

45. (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered. Provisions as to agricultural produce under attachment.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)*

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Attachment  
of debt, share  
and other  
property not  
in possession  
of judgment-  
debtor.

**46.** (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,
- (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;
- (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

**47.** Where

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)*

47. Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment of share in moveables.

48. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may, by notification in the Gazette of India or in the local official Gazette, as the case may be, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

Attachment of salary or allowances of public officer or servant of railway company or local authority.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of His Majesty's Indian revenues or the funds of a railway company carrying on business in any part of British India or local authority in British India; and the Government or the railway company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

49. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in

Attachment of partnership property.



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*(Order XXI.—Execution of Decrees and Orders.)*

in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within British India.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within British India.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

**Execution of** 50. (1) Where a decree has been passed against a firm,  
**decree against** execution may be granted—  
**firm.**

- (a) against any property of the partnership;
- (b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
- (c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 247 of the Indian Contract Act, 1872.

IX of 1872.

(2) Where

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(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court. Attachment of negotiable instruments.

52. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued: Attachment of property in custody of Court or public officer.

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

53. (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,— Attachment of decrees.

(a) if the decrees were passed by the same Court, then by order of such Court, and,

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the

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the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—

- (i) the Court which passed the decree sought to be executed cancels the notice, or
- (ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either

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either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

54. (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge. Attachment of immoveable property.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

55. Where—

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or Removal of attachment & satisfaction of decree.
- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- (c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

56. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same. Order for payment of coin or currency notes to party entitled under decree.

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease. Determination of attachment.

*Investigation of claims and objections.*

58. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in Investigation of claims, &c., and

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objections to attachment of, attached property.

in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit :

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

Postpone-ment of sale.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to be adduced by claimant.

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Release of property from attachment.

60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

Disallowance of claim to property attached.

61. Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer. Saving of suits to establish right to attached property.

62. Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

*Sale*

*(The First Schedule.)**(Order XXI.—Execution of Decrees and Orders.)**Sale generally.*

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Power to order property attached to be sold and proceeds to be paid to person entitled.

65. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Sale by whom conducted and how made.

66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

Proclamation of sales by public auction.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce

produce

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produce any document in his possession or power relating thereto.

Mode of  
making  
proclama-  
tion.

**67.** (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the local official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

Time of sale.

**68.** Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

Adjournment  
or stoppage  
of sale.

**69.** (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

Saving of cer-  
tain sales.

**70.** Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.

Defaulting  
purchaser

**71.** Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending

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attending such re-sale,\* shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

answerable  
for loss on  
re-sale.

**72.** (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder  
not to bid for  
or buy prop-  
erty without  
permission.  
Where decree-  
holder pur-  
chases, am-  
ount of de-  
cree may be  
taken as pay-  
ment.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

**73.** No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Restriction  
on bidding  
or purchase  
by officers.

*Sale of moveable property.*

**74.** (1) Where the property to be sold is agricultural produce, the sale shall be held,—

Sale of agri-  
cultural  
produce

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or,

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited :

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the



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(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day, the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops.

**75.** (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Negotiable instruments and shares in corporations.

**76.** Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Sale by public auction.

**77.** (1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity not to vitiate sale, but any person injured may sue.

**78.** No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of moveable property, debts and shares.

**79.** (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where

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(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

80. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

Transfer of negotiable instruments and shares.

(2) Such execution or endorsement may be in the following form, namely:—

A. B. by C. D., Judge of the Court of (*or as the case may be*), in a suit by E. F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Vesting order in case of other property.

*Sale of immoveable property.*

82. Sales of immoveable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

What Courts may order sales.

83. (1) Where

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Postpone-  
ment of sale  
to enable  
judgment-  
debtor to  
raise amount  
of decree.

**83.** (1) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale :

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of rule 72, into Court :

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

Deposit by  
purchaser  
and re-sale on  
default.

**84.** (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

Time for pay-  
ment in full  
of purchase-  
money.

**85.** The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property :

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

Procedure in  
default of  
payment.

**86.** In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property

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property or to any part of the sum for which it may subsequently be sold.

**87.** Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale. Notification on re-sale.

**88.** Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer. Bid of co-sharer to have preference.

**89.** (1) Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,— Application to set aside sale on deposit.

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

**90.** (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it: Application to set aside sale on ground of irregularity or fraud.

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

**91.** The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground Application by purchaser to set aside sale on ground of

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ground that the judgment-debtor had no saleable interest in the property sold.

judgment  
debtor having  
no saleable  
interest.

Sale when to  
become abso-  
lute or be set  
aside.

92. (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

Return of  
purchase-  
money in cer-  
tain cases.

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Certificate to  
purchaser.

94. Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

Delivery of  
property in  
occupancy  
of judgment-  
debtor.

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of  
property in  
occupancy of  
tenant.

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

*Resistance*

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*Resistance to delivery of possession to decree-holder or purchaser.*

97. (1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

Resistance or obstruction to possession of immoveable property.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

Resistance or obstruction by judgment-debtor.

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

Resistance or obstruction by *bond fide* claimant.

100. (1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

Dispossession by decree-holder or purchaser.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

*Bond fide* claimant to be restored to possession.

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution

Rules not applicable to transferee *lite pendente*.

of

## (The First Schedule.)

## (Order XXII.—Death, Marriage and Insolvency of Parties.)

of the suit in which the decree was passed or to the dispossession of any such person.

Orders conclusive subject to regular suit.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

## ORDER XXII.

*Death, Marriage and Insolvency of Parties.*

No abatement by party's death, if right to sue survives. Procedure where one of several plaintiffs or defendants dies and right to sue survives.

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs or of sole plaintiff.

3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Procedure in case of death of one of several defendants or of sole defendant.

4. (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate

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appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

Determina-  
tion of ques-  
tion as to  
legal represen-  
tative.

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

No abate-  
ment by rea-  
son of death  
after hear-  
ing.

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

Suit not  
abated by  
marriage of  
female party.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

8. (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

When plain-  
tiff's insol-  
vency bars  
suit.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Procedure  
where assignee  
fails to con-  
tinue suit or  
give security.

9. (1) Where



*(The First Schedule.)**(Order XXIII.—Withdrawal and Adjustment of Suits.)*

Effect of  
abatement or  
dismissal.

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877, shall apply to applications under sub-rule (2). XV of 1877.

Procedure in  
case of assign-  
ment before  
final order in  
suit.

10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

Application  
of Order to  
appeals.

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Application  
of Order to  
proceedings.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

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## ORDER XXIII.

### *Withdrawal and Adjustment of Suits.*

Withdrawal  
of suit or  
abandonment  
of part of  
claim.

1. (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it

*(The First Schedule.)**(Order XXIV.—Payment into Court.)*

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

*Limitation law not affected by first suit.*

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

*Compromise of suit.*

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

*Proceedings in execution of decrees not affected.*

**ORDER XXIV.***Payment into Court.*

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

*Deposit by defendant of amount in satisfaction of claim.*

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

*Notice of deposit.*

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

*Interest on deposit not allowed to plaintiff after notice.*

4. (1) Where

## (The First Schedule.)

## (Order XXV.—Security for Costs.)

Procedure where plaintiff accepts deposit as satisfaction in part.

4. (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

*Illustrations.*

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

## ORDER XXV.

*Security for Costs.*

When security for costs may be required from plaintiff.

1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

(2) Whoever

*(The First Schedule.)**(Order XXVI.—Commissions.)*

(2) Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of sub-rule (1). Residence out of British India.

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India.

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom. Effect of failure to furnish security.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

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**ORDER XXVI.**
*Commissions.**Commissions to examine witnesses.*

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it. Cases in which Court may issue commission to examine witness.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined. Order for commission.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it. Where witness resides within Court's jurisdiction.

4. (1) Any

*(The First Schedule.)**(Order XXVI.—Commissions.)*

Persons for  
whose exam-  
ination com-  
mission may  
issue.

4. (1) Any Court may in any suit issue a commission for the examination of—

- (a) any person resident beyond the local limits of its jurisdiction;
- (b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and
- (c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

Commission  
or Request to  
examine wit-  
ness not with-  
in British  
India.

5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

Court to ex-  
amine wit-  
ness pursuant  
to commis-  
sion.  
Return of  
commission  
with deposi-  
tions of wit-  
nesses.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

When deposi-  
tions may be  
read in evi-  
dence.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the

*(The First Schedule.)**(Order XXVI.—Commissions.)*

- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

*Commissions for local investigations.*

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Commissions to make local investigations.

Provided that, where the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

Procedure of Commissioner.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

Report and depositions to be evidence in suit.

Commissioner may be examined in person.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

*Commissions to examine accounts.*

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Commission to examine or adjust accounts.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceed-

Court to give Commissioner necessary instructions.

ings

## (The First Schedule.)

## (Order XXVI.—Commissions.)

ings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Proceedings  
and report  
to be evi-  
dence.  
Court may  
direct further  
inquiry.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

*Commissions to make partitions.*

Commission  
to make parti-  
tion of im-  
moveable pro-  
perty.

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Procedure of  
Commis-  
sioner.

14. (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

*General provisions.*

Expenses of  
Commission  
to be paid  
into Court.

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of  
Commission-  
ers.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

(a) examine the parties themselves and any witness whom

*(The First Schedule.)**(Order XXVII.—Suits by or against the Government or Public Officers in their official capacity.)*

whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of British India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

Attendance and examination of witnesses before Commissioner.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Parties to appear before Commissioner.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

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### ORDER XXVII.

#### *Suits by or against the Government or Public Officers in their official capacity.*

1. In any suit by or against the Secretary of State for India in Council, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

Suits by or against Government.

2. Persons being *ex officio* or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances,

Persons authorized to act for Government.



*(The First Schedule.)**(Order XXVII.—Suits by or against the Government or Public Officers in their official capacity.)*

pearances, acts and applications under this Code may be made or done on behalf of the Government.

Plaints in suits by or against Government.

3. In suits by or against the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words "The Secretary of State for India in Council."

Agent for Government to receive process.

4. The Government pleader in any Court, or such other person as the Local Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Secretary of State for India in Council issued by such Court.

Fixing of day for appearance on behalf of Government.

5. The Court, in fixing the day for the Secretary of State for India in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the said Secretary of State for India in Council or the Government, and may extend the time at its discretion.

Attendance of person able to answer questions relating to suit against Government.

6. The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Secretary of State for India in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Extension of time to enable public officer to make reference to Government.

7. (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

Procedure in suits against public officer.

8. (1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice

*(The First Schedule.)**(Order XXVIII.—Suits by or against Military Men.)*

notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties :

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

## ORDER XXVIII.

*Suits by or against Military Men.*

1. (1) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

(2) The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation.*—In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, detachment or dépôt to which the officer or soldier belongs.

2. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Person so authorized may act personally or appoint pleader.

3. Processes served upon any person authorized by an officer or a soldier under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

Service on person so authorized or on his pleader, to be good service.

## ORDER XXIX.

*(The First Schedule.)*

*(Order XXIX.—Suits by or against Corporations.  
Order XXX.—Suits by or against Firms and Persons  
carrying on business in names other than their own.)*

## ORDER XXIX.

*Suits by or against Corporations.*

Subscription  
and verifica-  
tion of plead-  
ing.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service on  
corporation.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Power to  
require  
personal  
attendance of  
officer of  
corporation.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

## ORDER XXX.

*Suits by or against Firms and Persons carrying on business  
in names other than their own.*

Suing of part-  
ners in name  
of firm.

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

Disclosure of  
partners'  
names.

2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare

*(The First Schedule.)*

*(Order XXX.—Suits by or against Firms and Persons carrying on business in names other than their own.)*

declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

**3.** Where persons are sued as partners in the name of Service. their firm, the summons shall be served either—

- (a) upon any one or more of the partners, or
- (b) at the principal place at which the partnership business is carried on within British India upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without British India:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within British India whom it is sought to make liable.

**4.** (1) Notwithstanding anything contained in section Right of suit  
on death of  
partner.  
IX of 1872. 45 of the Indian Contract Act, 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

- (a) to apply to be made a party to the suit, or
- (b) to

*(The First Schedule.)**(Order XXXI.—Suits by or against Trustees, Executors and Administrators.)*

(b) to enforce any claim against the survivor or survivors.

Notice in  
what capacity  
served.

5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Appearance  
of partners.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance  
except  
by partners.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Appearance  
under protest.

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

Suits between  
co-partners.

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Suit against  
person carrying  
on business in  
name other than  
his own.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

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### ORDER XXXI.

#### *Suits by or against Trustees, Executors and Administrators.*

Representa-  
tion of bene-

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the

*(The First Schedule.)**(Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)*

the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

beneficiaries in suits concerning property vested in trustees, etc.

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them :

Joinder of trustees, executors and administrators.

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside British India, need not be made parties.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

Husband of married executrix not to join.

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## ORDER XXXII.

*Suits by or against Minors and Persons of Unsound Mind.*

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

Minor to sue by next friend.

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

Where suit is instituted without next friend, plaint to be taken off the file.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

Guardian for the suit to be appointed by Court for minor defendant.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian

*(The First Schedule.)**(Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)*

guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

Who may act as next friend or be appointed guardian for the suit.

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

Representation of minor by next friend or guardian for the suit.

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably

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reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

Receipt by next friend or guardian for the suit of property under decree for minor.

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

Agreement or compromise by next friend or guardian for the suit.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

Retirement of next friend.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency

Removal of next friend.



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sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Stay of proceedings on removal, etc., of next friend.

10. (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Retirement, removal or death of guardian for the suit.

11. (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Course to be followed by minor plaintiff or applicant on attaining majority.

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:—

“A. B., late a minor, by C. D., his next friend, but now having attained majority.”

(4) Where he elects to abandon the suit or application, he

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he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex parte*: but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit. Where minor co plaintiff attaining majority desires to repudiate suit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper. Unreasonable or improper suit.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued. Application of rules to persons of unsound mind.

16. Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of the Governor General in Council or a Local Government in the name of an agent or in any other name, or shall be construed to affect Saving for Princes and Chiefs.

## (The First Schedule.)

## (Order XXXIII.—Suits by Paupers.)

affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

## ORDER XXXIII.

*Suits by Paupers.*

Suits may be  
instituted in  
form & pauper-  
is.

1. Subject to the following provisions, any suit may be instituted by a pauper.

*Explanation.*—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

Contents of  
application.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Presentation  
of applica-  
tion.

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Examination  
of applicant.

4. (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented  
by agent,  
Court may  
order appli-  
cant to be  
examined by  
commission.  
Rejection of  
application.

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. The Court shall reject an application for permission to sue as a pauper—

(a) where

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- (a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or
- (b) where the applicant is not a pauper, or
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- (d) where his allegations do not show a cause of action, or
- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

6. Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

*Notice of day for receiving evidence of applicant's pauperism.*

7. (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

*Procedure at hearing.*

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

8. Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

*Procedure if application admitted.*

*(The First Schedule.)**(Order XXXIII.—Suits by Paupers.)*

**Dispaupering.** 9. The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

**Costs where pauper succeeds.** 10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

**Procedure where pauper fails.** 11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

- (a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or
- (b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

**Government may apply for payment of court-fees.** 12. The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10 or rule 11.

**Government to be deemed a party.** 13. All matters arising between the Government and any party to the suit under rule 10, rule 11 or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

**Copy of decree to be sent to Collector.** 14. Where an order is made under rule 10, rule 11 or rule 12, the Court shall forthwith cause a copy of the decree to be forwarded to the Collector.

*(The First Schedule.)**(Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)*

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

Costs.

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### ORDER XXXIV.

*Suits relating to Mortgages of Immoveable Property:*

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Parties to suits for foreclosure, sale and redemption.

*Explanation.*—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

2. In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a decree—

Preliminary decree in foreclosure-suit.

(a) ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or

(b) declaring the amount so due at the date of such decree,

and directing—

(c) that if the defendant pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant free from the mortgage

and

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and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, but

(d) that, if such payment is not made on or before the day to be fixed by the Court, the defendant shall be debarred from all right to redeem the property.

Final decree  
in foreclosure-  
suit.

3. (1) Where, on or before the day fixed, the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

(a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required—

(b) ordering him to retransfer the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property:

Power to en-  
large time.

Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for such payment.

Discharge of  
debt.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

Preliminary  
decree in suit  
for sale.

4. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clauses (a), (b) and (c) of rule 2 and also directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expen-

*(The First Schedule.)**(Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)*

ses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

(2) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff or of any person interested either in the mortgage-money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in Court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms. Power to decree sale in foreclosure-suit.

5. (1) Where on or before the day fixed the defendant pays into Court the amount declared due as aforesaid together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree— Final decree in suit for sale

(a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required,—

(b) ordering him to retransfer the mortgaged property as directed in the said decree,

and also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the mortgaged property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in rule 4.

6. Where the net proceeds of any such sale are found to be insufficient to pay the amount due to the plaintiff, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such amount. Recovery of balance due on mortgage.

7. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree— Preliminary decree in redemption-suit.

(a) ordering that an account be taken of what will be due to the defendant for principal and interest



*(The First Schedule.)**(Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)*

terest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or

(b) declaring the amount so due at the date of such decree,

and directing—

(c) that, if the plaintiff pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff in possession of the property, but

(d) that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage is simple or usufructuary) be debarred from all right to redeem or (unless the mortgage is by conditional sale) that the mortgaged property be sold.

Final decree  
in redemption  
suit.

8. (1) Where, on or before the day fixed, the plaintiff pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

(a) ordering the defendant to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required,—

(b) ordering him to retransfer the mortgaged property as directed in the said decree,

and also, if necessary,—

(c) ordering him to put the plaintiff in possession of the property.

(2) Where such payment is not so made, and the mortgage is not simple or usufructuary, the Court shall, on application

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application made in that behalf by the defendant, pass a decree that the plaintiff and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary ordering the plaintiff to put the defendant in possession of the property.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

(4) Where such payment is not so made, and the mortgage is not by conditional sale, the Court shall, on application made in that behalf by the defendant, pass a decree that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance (if any) be paid to the plaintiff or other persons entitled to receive the same :

Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for payment. Power to enlarge time.

9. Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property. Decree where nothing is found due or where mortgagee has been overpaid.

10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure or sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure or sale or redemption up to the time of actual payment. Costs of mortgagees subsequent to decree.

11. Where property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagee. Right of mesne mortgagee to redeem and foreclose.

12. Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property Sale of property subject to prior mortgage.

*(The First Schedule.)**(Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)*

property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Application  
of proceeds.

**13.** (1) Such proceeds shall be brought into Court and applied as follows:—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

IV of 1882.

Suit for sale  
necessary for  
bringing  
mortgaged  
property to  
sale.

**14.** (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been IV of 1882. extended.

Charger.

**15.** All the provisions contained in this Order as to the sale or redemption of mortgaged property shall, so far as may be, apply to property subject to a charge within the meaning of section 100 of the Transfer of Property Act, 1882. IV of 1882

**ORDER XXXV.**

## (The First Schedule.)

## (Order XXXV.—Interpleader.)

## ORDER XXXV.

*Interpleader.*

1. In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaints, state— Plaintiff in interpleader-suit.

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit. Payment of thing claimed into Court.

3. Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit. Procedure where defendant is suing plaintiff

4. (1) At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit. Procedure at first hearing.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for Agents and tenants may sue the

## (The First Schedule.)

## (Order XXXVI.—Special Case.)

not institute  
interpleader-  
suits.

the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

*Illustrations.*

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Charge for  
plaintiff's  
costs.

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

## ORDER XXXVI.

*Special Case.*

Power to  
state case for  
Court's  
opinion.

1. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Where value  
of subject-  
matter must  
be stated.

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement  
to be filed and  
registered as  
suit.

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value

*(The First Schedule.)**(Order XXXVII.—Summary Procedure on Negotiable Instruments.)*

value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Parties to be subject to Court's jurisdiction.

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

Hearing and disposal of case.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,—

- (a) that the agreement was duly executed by them,
- (b) that they have a *bonâ fide* interest in the question stated therein, and
- (c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

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### ORDER XXXVII.

#### *Summary Procedure on Negotiable Instruments.*

1. This Order shall apply only to—

Application of Order.

- (a) the High Courts of Judicature at Fort William, Madras and Bombay;
- (b) the Chief Court of Lower Burma;
- (c) the Court of the Judicial Commissioner of Sind; and
- (d) any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, have been already applied.

XIV of 1882.

2. (1) All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix etc.

Institution of summary suits upon bills of exchange, etc.

## (The First Schedule.)

## (Order XXXVII.—Summary Procedure on Negotiable Instruments.)

Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are, in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith.

Defendant showing defence on merits to have leave to appear.

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

Power to set aside decree.

4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill, etc., to be deposited with officer of Court.

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Procedure in suits.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII.

*(The First Schedule.)**(Order XXXVIII.—Arrest and Attachment before Judgment.)*

## ORDER XXXVIII.

*Arrest before Judgment.*

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

Where defendant may be called upon to furnish security for appearance.

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

2. (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called

Security.



*(The First Schedule.)**(Order XXXVIII.—Arrest and Attachment before Judgment.)*

called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure on application by surety to be discharged.

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Procedure where defendant fails to furnish security or find fresh security.

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied :

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

*Attachment before Judgment.*

Where defendant may be called upon to furnish security for production of property.

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the

*(The First Schedule.)**(Order XXXVIII.—Arrest and Attachment before Judgment.)*

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached. Attachment where cause not shown or security not furnished.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree. Mode of making attachment.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money. Investigation of claim to property attached before judgment.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed. Removal of attachment when security furnished or suit dismissed.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree. Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.

11. Where

*(The First Schedule.)**(Order XXXIX.—Temporary Injunctions and Interlocutory Orders.)*

Property attached before judgment not to be re-attached in execution of decree.  
Agricultural produce not attachable before judgment.

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

12. Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

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ORDER XXXIX.

*Temporary Injunctions and Interlocutory Orders.**- Temporary Injunctions.*

Cases in which temporary injunction may be granted.

1. Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

Injunction to restrain repetition or continuance of breach.

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In

*(The First Schedule.)**(Order XXXIX.—Temporary Injunctions and Interlocutory Orders.)*

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Before granting injunction Court to direct notice to opposite party.

4. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made there-to by any party dissatisfied with such order.

Order for injunction may be discharged, varied or set aside.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Injunction to corporation binding on its officers.

*Interlocutory Orders.*

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Power to order interim sale.

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

Detention, preservation, inspection, etc., of subject-matter of suit.

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to

## (The First Schedule.)

## (Order XL.—Appointment of Receivers.)

be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule.

Application for such orders to be after notice.

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

When party may be put in immediate possession of land the subject-matter of suit.

9. Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Deposit of money, etc., in Court.

10. Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

## ORDER XL.

*Appointment of Receivers.*

Appointment of receivers.

1. (1) Where it appears to the Court to be just and convenient, the Court may by order—

(a) appoint

*(The First Schedule.)**(Order XL.—Appointment of Receivers.)*

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver; and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

2. The Court may by general or special order fix the Remuneration to be paid as remuneration for the services of the receiver.

3. Every receiver so appointed shall—

Duties.

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

4. Where a receiver—

Enforcement of receiver's duties.

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

5. Where

*(The First Schedule.)**(Order XLI.—Appeals from Original Decrees.)*

When Collector may be appointed receiver.

5. Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

## ORDER XLI.

*Appeals from Original Decrees.*

Form of appeal.

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

What to accompany memorandum.

Contents of memorandum.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

Grounds which may be taken in appeal.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Rejection or amendment of memorandum.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

One of several plaintiffs or defendants may obtain reversal of whole decree

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants,

*(The First Schedule.)**(Order XLI.—Appeals from Original Decrees.)*

defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

where it proceeds on ground common to all.

*Stay of proceedings and of execution.*

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Appellate Court.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

Stay by Court which passed the decree.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

Security in case of order for execution of decree appealed from.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application

of



*(The First Schedule.)**(Order XLI.—Appeals from Original Decrees.)*

of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

No security to be required from the Government or a public officer in certain cases.

7. No such security as is mentioned in rules 5 and 6 shall be required from the Secretary of State for India in Council or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Exercise of powers in appeal from order made in execution of decree.

8. The powers conferred by rules 5 and 6 shall be exerciseable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

*Procedure on admission of appeal.*

Registry of memorandum of appeal.

9. (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court, shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

(2) Such book shall be called the Register of Appeals.

Register of Appeals. Appellate Court may require appellant to furnish security for costs.

10. (1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Where appellant resides out of British India.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

Power to dismiss appeal without sending notice to Lower Court.

11. (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

12. (1) Unless

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12. (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal. Day for hearing appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred. Appellate Court to give notice to Court whose decree appealed from.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court. Transmission of papers to Appellate Court.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant. Copies of exhibits in Court whose decree appealed from.

14. (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice. Publication and service of notice of day for hearing appeal.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to. Appellate Court may itself cause notice to be served.

15. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*. Contents of notice. *id*

*Procedure on hearing.*

16. (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. Right to begin.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

17. (1) Where

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## (Order XLI.—Appeals from Original Decrees.)

Dismissal of appeal for appellant's default.

17. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Hearing appeal *ex parte*.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

18. Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed :

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

Re-admission of appeal dismissed for default.

19. Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Power to adjourn hearing and direct persons appearing interested to be made respondents.

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

Re-hearing on application of respondent against whom *ex parte* decree made.

21. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Upon hearing respondent may object to decree as if he had preferred

22. (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which

he

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he could have taken by way of appeal, provided he has filed <sup>separate ap-</sup> such objection in the Appellate Court within one month from <sup>peal.</sup> the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto. <sup>Form of objection and provisions applicable thereto.</sup>

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

**23.** Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand. <sup>Remand of case by Appellate Court.</sup>

**24.** Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds. <sup>Where evidence on record sufficient, Appellate Court may determine case finally.</sup>

**25.** Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine <sup>Where Appellate Court may frame</sup>

*(The First Schedule.)**(Order XLI.—Appeals from Original Decrees.)*

issues and refer them for trial to Court whose decree appealed from.

mine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

Findings and evidence to be put on record. Objections to finding. Determination of appeal.

26. (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Production of additional evidence in Appellate Court.

27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

Mode of taking additional evidence.

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Points to be defined and recorded.

29. Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

*Judgment in appeal.*

Judgment when and

30. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether

*(The First Schedule.)**(Order XLI.—Appeals from Original Decrees.)*

whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

**31.** The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and,
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

where pronounced.  
Contents, date and signature of judgment.

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

**32.** The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

What judgment may direct.

**33.** The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

Power of Court of Appeal.

*Illustration.*

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

**34.** Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Dissent to be recorded.

*Decree in appeal.*

**35.** (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

Date and contents of decree.

(2) The

*(The First Schedule.)**(Order XLII.—Appeals from Appellate Decrees.  
Order XLIII.—Appeals from Orders.)*

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Copies of judgment and decree to be furnished to parties.

**36.** Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Certified copy of decree to be sent to Court whose decree appealed from.

**37.** A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

**ORDER XLII.***Appeals from Appellate Decrees.*

Procedure.

**1.** The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

**ORDER XLIII.***Appeals from Orders.*

Appeals from orders.

**1.** An appeal shall lie from the following orders under the provisions of section 104, namely:—

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;
- (b) an order under rule 10 of Order VIII pronouncing judgment against a party;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an

*(The First Schedule.)**(Order XLIII.—Appeals from Orders.)*

- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;
- (e) an order under rule 4 of Order X pronouncing judgment against a party;
- (f) an order under rule 21 of Order XI;
- (g) an order under rule 10 of Order XVI for the attachment of property;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;
- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (o) an order under rule 3 or rule 8 of Order XXXIV refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;
- (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) an



*(The First Schedule.)**(Order XLIV.—Pauper Appeals. Order XLV.—  
Appeals to the King in Council.)*

(v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV;

(w) an order under rule 4 of Order XLVII granting an application for review.

Procedure.

2. The rules of Order XLI shall apply, so far as may be, to appeals from orders.

## ORDER XLIV.

*Pauper Appeals.*

Who may appeal as pauper.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

Procedure on application for admission of appeal.

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Inquiry into pauperism.

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

## ORDER XLV.

*Appeals to the King in Council.*

“Decree” defined.

1. In this Order, unless there is something repugnant in the subject or context, the expression “decree” shall include a final order.

Application to Court whose decree complained of.

2. Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of.

*(The First Schedule.)**(Order XLV.—Appeals to the King in Council.)*

3. (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to His Majesty in Council. Certificate as to value or fitness.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated: but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination. Consolidation of suits.

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made. Remission of dispute to Court of first instance.

6. Where such certificate is refused, the petition shall be dismissed. Effect of refusal of certificate.

7. (1) Where the certificate is granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,— Security and deposit required on grant of certificate.

(a) furnish security for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct copy of the whole record of the suit, except—

(1) formal documents directed to be excluded by any order of His Majesty in Council in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts

*(The First Schedule.)**(Order XLV.—Appeals to the King in Council.)*

- (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and
- (4) such other documents as the High Court may direct to be excluded.

(2) Where the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also within the time mentioned in sub-rule (1) deposit the amount required to defray the expense of printing such copy.

Admission of  
appeal and  
procedure  
thereon.

8. Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Revocation  
of acceptance  
of security.

9. At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to  
order further  
security or  
payment.

10. Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to His Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Effect of fail-  
ure to  
comply with  
order.

11. Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of His Majesty in Council,

and in the meantime execution of the decree appealed from shall not be stayed,

12. When

*(The First Schedule.)**(Order XLV.—Appeals to the King in Council.)*

12. When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

Refund of  
balance  
deposit.

13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

Powers of  
Court pending  
appeal.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

- (a) impound any moveable property in dispute or any part thereof, or
- (b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal, or
- (c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which His Majesty in Council may make on the appeal, or
- (d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

Increase of  
security found  
inadequate.

(2) In default of such further security being furnished as required by the Court,—

- (a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security;
- (b) if the original security was furnished by the respondent, the Court, shall, so far as may be practicable,

*(The First Schedule.)**(Order XLVI.—Reference.)*

practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Procedure to  
enforce orders  
of King in  
Council.

15. (1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred.

(2) Such Court shall transmit the order of His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as His Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Indian Governments.

Appeal from  
order relating  
to execution.

16. The orders made by the Court which executes the order of His Majesty in Council, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

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## ORDER XLVI.

*Reference.*

Reference of  
question to  
High Court.

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement

*(The First Schedule.)**(Order XLVI.—Reference.)*

ment of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;

Court may pass decree contingent upon decision of High Court.

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Judgment of High Court to be transmitted, and case disposed of accordingly.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

Costs of reference to High Court.

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Power to alter, etc., decree of Court making reference.

6. (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

Power to refer to High Court questions as to jurisdiction in small causes.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

(2) On

*(The First Schedule.)**(Order XLVII.—Review.)*

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

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ORDER XLVII.

*Review.*

Application  
for review of  
judgment.

1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

To whom ap-  
plications for  
review may  
be made.

2. An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application

*(The First Schedule.)**(Order XLVII.—Review.)*

plication may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review. Form of applications for review.

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application. Application where rejected.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same: Application where granted.  
Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for: and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same. Application for review in Court consisting of two or more Judges.

6. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected. Application where rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was— Order of rejection not appealable. Objections to order granting application.

(a) in contravention of the provisions of rule 2,  
(b) in contravention of the provisions of rule 4, or  
(c) after the expiration of the period of limitation prescribed



## (The First Schedule.)

## (Order XLVIII.—Miscellaneous.)

prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

Registry of application granted, and order for re-hearing.

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Bar of certain applications.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

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## ORDER XLVIII.

### Miscellaneous.

Process to be served at expense of party issuing.

1. (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service.

(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

Orders and notices how served.

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

Use of forms in appendices.

3. The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

## ORDER XLIX.

*(The First Schedule.)*

*(Order XLIX.—Chartered High Courts. Order L.—  
Provincial Small Cause Courts.)*

## ORDER XLIX.

*Chartered High Courts.*

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

Who may  
serve  
processes  
of High Court.

2. Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.

Saving in re-  
spect of Char-  
tered High  
Courts.

3. The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:—

Application  
of rules.

(1) rule 10 and rule 11, clauses (b) and (c), of Order VII;

(2) rule 3 of Order X;

(3) rule 2 of Order XVI;

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;

(5) rules 1 to 8 of Order XX; and

(6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

## ORDER L.

*Provincial Small Cause Courts.*

1. The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Causes Courts Act, 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say—

Provincial  
Small Cause  
Courts.

(a) so much of this schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the

*(The First Schedule.)**(Order LI.—Presidency Small Cause Courts.)*

- (ii) the execution of decrees against immoveable property or the interest of a partner in partnership property;
- (iii) the settlement of issues; and
- (b) the following rules and orders,—
  - Order II, rule 1 (frame of suit);
  - Order X, rule 3 (record of examination of parties);
  - Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;
  - Order XVIII, rules 5 to 12 (evidence);
  - Orders XLI to XLV (appeals);
  - Order XLVII, rules 2, 3, 5, 6, 7 (review);
  - Order LI.

## ORDER LI.

*Presidency Small Cause Courts.*

Presidency  
Small Cause  
Courts.

1. Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XXI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882, this schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay. XV of 1882.

## APPENDIX A.

## PLEADINGS.

## (1) TITLES OF SUITS.

IN THE COURT OF

A. B. (*add description and residence*) . . . *Plaintiff,*  
*against*

C. D. (*add description and residence*) . . . *Defendant.*

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## (2) DESCRIPTION OF PARTIES IN PARTICULAR CASES.

The Secretary of State for India in Council.

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The Advocate General of

---

The Collector of

---

The State of

---

The A. B. Company, Limited, having its registered office  
 at

---

A. B., a public officer of the C. D. Company

A. B.

(The First Schedule.—Appendix A.—Pleadings.)

A. B. (*add description and residence*), on behalf of himself and all other creditors of C. D., late of (*add description and residence*).

---

A. B. (*add description and residence*), on behalf of himself and all other holders of debentures issued by the \_\_\_\_\_ Company, Limited.

---

The Official Receiver.

---

A. B., a minor (*add description and residence*) by C. D. [*or* by the Court of Wards], his next friend.

---

A. B. (*add description and residence*), a person of unsound mind [*or of weak mind*], by C. D., his next friend.

---

A. B., a firm carrying on business in partnership at \_\_\_\_\_

---

A. B. (*add description and residence*), by his constituted attorney C. D. (*add description and residence*).

---

A. B. (*add description and residence*), Shebait of Thakur \_\_\_\_\_

---

A. B. (*add description and residence*), executor of C. D., deceased.

---

A. B. (*add description and residence*), heir of C. D., deceased.

(3) PLAINTS.

*(The First Schedule.—Appendix A.—Pleadings.)*

## (3) PLAINTS.

## No. 1.

## MONEY LENT.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. On the            day of            19    , he lent the defendant  
rupees repayable on the            day of            .
2. The defendant has not paid the same, except            ru-  
pees paid on the            day of            19    .  
*[If the plaintiff claims exemption from any law of limitation,  
say :—]*
3. The plaintiff was a minor [*or insane*] from the            day of  
till the            day of            .
4. [*Facts showing when the cause of action arose and that the  
Court has jurisdiction.*]
5. The value of the subject-matter of the suit for the pur-  
pose of jurisdiction is            rupees and for the purpose of  
court-fees is            rupees.
6. The plaintiff claims            rupees, with interest  
at            per cent. from the            day of            19    .

## No. 2.

## MONEY OVERPAID.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. On the            day of            19     
the plaintiff agreed to buy and the defendant agreed to sell  
bars of silver at            annas per tola of fine silver.
2. The plaintiff procured the said bars to be assayed by *E. F.*,  
who was paid by the defendant for such assay, and *E. F.* declared  
each of the bars to contain 1,500 tolas of fine silver, and the plain-  
tiff accordingly paid the defendant            rupees.
3. Each

*(The First Schedule.— Appendix A.—Pleadings.)*

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 3.

GOODS SOLD AT A FIXED PRICE AND DELIVERED.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , *E. F.* sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods].

2. The defendant promised to pay                      rupees for the said goods on delivery [or on the                      day of                      , some day before the plaint was filed].

3. He has not paid the same.

4. *E. F.* died on the                      day of                      19  
By his last will he appointed his brother, the plaintiff, his executor.

*[As in paras. 4 and 5 of Form No. 1.]*

7. The plaintiff as executor of *E. F.* claims *[Relief claimed]* .

## No. 4.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , plaintiff sold and delivered to the defendant [sundry articles of house-furniture], but no express agreement was made as to the price

2. The goods were reasonably worth                      rupees.

3. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

No. 5.

(The First Schedule.—Appendix A.—Pleadings.)

No. 5.

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the            day of            19   , E. F. agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*] and that E. F. should pay for the goods on delivery            rupees.

2. The plaintiff made the goods, and on the            day of            19    offered to deliver them to E. F., and has ever since been ready and willing so to do.

3. E. F. has not accepted the goods or paid for them.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 6.

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the            day of            19   , the plaintiff put up at auction sundry [*goods*], subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [*one crate of crockery*] at the auction at the price of            rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [*ten days*] after the sale, nor afterwards.

5. On the            day of            19   , the plaintiff re-sold the [*crate of crockery*], on account of the defendant, by public auction, for            rupees.

6. The expenses attendant upon such re-sale amounted to            rupees.

7. The defendant has not paid the deficiency thus arising, amounting to            rupees.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]



1. That the defendant occupied the [house No.                  ,  
Street],

*(The First Schedule.—Appendix A.—Pleadings.)*

Street], by permission of the said X. Y., from the day of 19 , until the day of 19 , and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff as executor of X. Y. claims *[Relief claimed]*.

---

No. 10.

ON AN AWARD.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E. F. and G. H., and the original document is annexed hereto.

2. On the day of 19 , the arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

---

No. 11.

ON A FOREIGN JUDGMENT.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , at , in the State [or Kingdom] of , the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

No. 12.

*(The First Schedule.—Appendix A.—Pleadings.)*

No. 12.

## AGAINST SURETY FOR PAYMENT OF RENT.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. On the            day of            19   , *E. F.* hired from the plaintiff for the term of    years, the [house No.   , Street], at the annual rent of rupees, payable [monthly].

2. The defendant agreed, in consideration of the letting of the premises to *E. F.*, to guarantee the punctual payment of the rent.

3. The rent for the month of            19   , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add :—*]

4. On the            day of            19   , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 13.

## BREACH OF AGREEMENT TO PURCHASE LAND.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. On the            day of            19   , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

[*Or, on the            day of            19   , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of            for rupees.*]

2. On the            day of            19   , the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made

to

(The First Schedule.—Appendix A.—Pleadings.)

to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 14.

NOT DELIVERING GOODS SOLD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the        day of        19   , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the        day of        19   , and that the plaintiff should pay therefor rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 15.

WRONGFUL DISMISSAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the        day of        19   , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services rupees [monthly].

2. On

*(The First Schedule.—Appendix A.—Pleadings.)*

2. On the       day of       19   , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the       day of       19   , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

---

No. 16.

BREACH OF CONTRACT TO SERVE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the       day of       19   , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of       rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the       day of 19   offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the       day of       19   he refused to serve the plaintiff as aforesaid.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

---

No. 17.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the       day of       19   , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. *[Or state the tenor of the contract.]*

[2. The

(The First Schedule.—Appendix A.—Pleadings.)

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 18.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the        day of        19    , the plaintiff took E. F. into his employment as a clerk.

2. In consideration thereof, on the        day of 19    , the defendant agreed with the plaintiff that if E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding        rupees.

[Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of        rupees, subject to the condition that if E. F. should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[Or, 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the        day of        19    and the        day of        19    E. F. received money and other property, amounting to the value of        rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

*(The First Schedule.—Appendix A.—Pleadings.)*

## No. 19.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. On the        day of        19    , the defendant, by a registered instrument, let to the plaintiff [the house No.    , Street] for the term of        years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the        day of        19    during the said term, *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend        rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal].

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 20.

ON AN AGREEMENT OF INDEMNITY.

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. On the        day of        19    , the plaintiff and defendant, being partners in trade under the style of *A. B.* and *C. D.*, dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On

*(The First Schedule.—Appendix A.—Pleadings.)*

2. On the       day of       19   , [a judgment was recovered against the plaintiff and defendant by *E. F.*, in the High Court of Judicature at       , upon a debt due from the firm to *E. F.*, and on the       day of       19   ,] the plaintiff paid       rupees [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

## No. 21.

## PROCURING PROPERTY BY FRAUD.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the       day of       19   , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth       rupees over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of       rupees.

3. The said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [*Or, if the goods were not delivered.*] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended rupees.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

## No. 22.

## FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the       day of       19   , the defendant  
represented



*(The First Schedule.—Appendix A.—Pleadings.)*

represented to the plaintiff that *E. F.* was solvent and in good credit, and worth        rupees over all his liabilities [or that *E. F.* then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. The plaintiff was thereby induced to sell to *E. F.* [rice] of the value of        rupees [on        months credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or to deceive and injure the plaintiff].

4. *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

## No. 23.

## POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called        and situate in        and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the        day of        19    , the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

*(The First Schedule.—Appendix A.—Pleadings.)*

## No. 24.

## CARRYING ON A NOXIOUS MANUFACTURE

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called \_\_\_\_\_, situate in \_\_\_\_\_.

2. Ever since the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

*[As in paras. 4 and 5 of Form No. 1 and Relief claimed.]*

## No. 25.

## OBSTRUCTING A RIGHT OF WAY.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of \_\_\_\_\_].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or on foot] at all times of the year.

*(The First Schedule.—Appendix A.—Pleadings.)*

3. On the       day of       19       , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the way [and has ever since wrongfully obstructed the same].

4. *(State special damage, if any.)*

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

No. 26.

## OBSTRUCTING A HIGHWAY.

*(Title.)*

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from  
to       so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

No. 27.

## DIVERTING A WATER-COURSE.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the       , in the village of       , district of      

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the       day of       19       , the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By

(The First Schedule.—Appendix A.—Pleadings.)

4. By reason thereof the plaintiff has been unable to grind more than                sacks per day, whereas, before the said diversion of water, he was able to grind                sacks per day.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 28.

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the                day of                19   , the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 29.

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the                day of                19   , the defendants were common carriers of passengers by railway between                and                .

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at                [or near the station of                or between the stations of                and                ], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants'                servants,

*(The First Schedule.—Appendix A.—Pleadings.)*

servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., *and state the special damage, if any, as*], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

*[Or thus:—*2. On that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., *as in para. 3.]*

## No. 30.

## INJURIES CAUSED BY NEGLIGENT DRIVING.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at  
The defendant is a merchant of

2. On the        day of        19   , the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

*[As in paras. 4 and 5 of Form No. 1 and Relief claimed.]*

*(The First Schedule.—Appendix A.—Pleadings.)*

## No. 31.

## FOR MALICIOUS PROSECUTION.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the                      day of                      19                      , the defendant obtained a warrant of arrest from                      [a Magistrate of the said city, *or as the case may be*] on a charge of                      , and the plaintiff was arrested thereon, and imprisoned for                      [days, *or* hours, and gave bail in the sum of                      rupees to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the                      day of                      19                      , the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him ; *or* in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.* ; *or* in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 32.

## MOVEABLES WRONGFULLY DETAINED.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the                      day of                      19                      , plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is                      rupees.

2. From

*(The First Schedule.—Appendix A.—Pleadings.)*

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the day of 19 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff claims—

- (1) delivery of the said goods, or rupees,  
in case delivery cannot be had ;
- (2) rupees compensation for the detention thereof.

*The Schedule.*

No. 33.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE  
WITH NOTICE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the defendant C. D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. The plaintiff was hereby induced to sell and deliver to C. D. [one hundred boxes of tea], the estimated value of which is rupees.

3. The said representations were false, and were then known by C. D. to be so [or at the time of making the said representations, C. D. was insolvent, and knew himself to be so].

4. C. D. afterwards transferred the said goods to the defendant E. F. without consideration [or who had notice of the falsity of the representation].

*[As in paras. 4 and 5 of Form No. 1.]*

7. The plaintiff claims—

- (1) delivery of the said goods, or rupees,  
in case delivery cannot be had ;
- (2) rupees compensation for the detention thereof

No. 34.

*(The First Schedule.—Appendix A.—Pleadings.)*

## No. 34.

## RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19                      ,  
the defendant represented to the plaintiff that a certain piece  
of ground belonging to the defendant, situated at                      , con-  
tained [ten bighas].

2. The plaintiff was thereby induced to purchase the same  
at the price of                      rupees in the belief that the  
said representation was true, and signed an agreement, of which  
the original is hereto annexed. But the land has not been  
transferred to him.

3. On the                      day of                      19                      the plaintiff paid  
the defendant                      rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only [five  
bighas].

*[As in paras. 4 and 5 of Form No. 1.]*

7. The plaintiff claims—

(1)                      rupees, with interest from the  
                    day of                      19                      ;

(2) that the said agreement be delivered up and cancelled.

## No. 35.

## AN INJUNCTION RESTRAINING WASTE

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is the absolute owner of [*describe the property*].

2. The defendant is in possession of the same under a lease  
from the plaintiff.

3. The defendant has [cut down a number of valuable trees,  
and threatens to cut down many more for the purpose of sale]  
without the consent of the plaintiff.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The



*(The First Schedule.—Appendix A.—Pleadings.)*

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

*[Pecuniary compensation may also be claimed.]*

## No. 36.

## INJUNCTION RESTRAINING NUISANCE.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. Street, Calcutta].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street ].

3. On the day of 19 , the defendant erected upon his said plot a slaughter-house, and still maintains the same ; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

[4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

*[As in paras. 4 and 5 of Form No. 1.]*

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

## No. 37.

## PUBLIC NUISANCE.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens  
and

(*The First Schedule.—Appendix A.—Pleadings.*)

and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Advocate General [*or of the Collector or other officer appointed in this behalf*] to the institution of this suit.

[*As in paras. 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

- (1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road :
- (2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

---

No. 38.

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

[*As in Form No. 27.*]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

---

No. 39.

RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1 Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grand-father which was executed by an eminent painter], and of which no duplicate exists [*or state any facts showing that the property is of a kind that cannot be replaced by money*].

2. On

*(The First Schedule.—Appendix A.—Pleadings.)*

2. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
he deposited the same for safe-keeping with the defendant.

3. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, he  
demanded the same from the defendant and offered to pay all  
reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff  
and threatens to conceal, dispose of, cut or injure the same if  
required to deliver it up.

5. No pecuniary compensation would be an adequate com-  
pensation to the plaintiff for the loss of the [painting].

*[As in paras. 4 and 5 of Form No. 1.]*

8. The plaintiff claims—

- (1) that the defendant be restrained by injunction from  
disposing of, injuring or concealing the said [paint-  
ing];
- (2) that he be compelled to deliver the same to the plain-  
tiff.

---

No. 40.

INTERPLEADER.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. Before the date of the claims hereinafter mentioned G. H.  
deposited with the plaintiff *[describe the property]* for [safe-  
keeping].

2. The defendant C. D. claims the same [under an alleged  
assignment thereof to him from G. H.].

3. The defendant E. F. also claims the same [under an order  
of G. H. transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the  
defendants.

5. He has no claim upon the said property other than for  
charges and costs, and is ready and willing to deliver it to such  
persons as the Court shall direct.

6. The suit is not brought by collusion with either of the  
defendants.

*[As in paras. 4 and 5 of Form No. 1.]*

9. The

*(The First Schedule.—Appendix A.—Pleadings.)*

## 9. The plaintiff claims—

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) that they be required to interplead together concerning their claims to the said property ;
- [(3) that some person be authorized to receive the said property pending such litigation ;]
- (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

---

No. 41.

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND  
ALL OTHER CREDITORS.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :--

1. *E. F.*, late of \_\_\_\_\_, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of  
[*here insert nature of debt and security, if any.*]

2. *E. F.* died on or about the \_\_\_\_\_ day of \_\_\_\_\_. By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_, he appointed *C. D.* his executor [or devised his estate in trust, etc., or died intestate, as the case may be].

3. The will was proved by *C. D.* [or letters of administration were granted, etc.].

4. The defendant has possessed himself of the moveable [and immoveable, or the proceeds of the immoveable] property of *E. F.*, and has not paid the plaintiff his debt.

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims that an account may be taken of the moveable [and immoveable] property of *E. F.*, deceased, and that the same may be administered under the decree of the Court.

(The First Schedule.—Appendix A.—Pleadings.)

No. 42.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title.)

[Alter Form No. 41 thus]—

[Omit paragraph 1 and commence paragraph 2] *E. F.*, late of  
, died on or about the                      day of

. By his last will, dated the                      day of  
he appointed *C. D.* his executor, and bequeathed to the  
plaintiff [*here state the specific legacy*].

*For paragraph 4 substitute—*

The defendant is in possession of the moveable property of  
*E. F.*, and, amongst other things, of the said [*here name the  
subject of the specific bequest*].

*For the commencement of paragraph 7 substitute—*

The plaintiff claims that the defendant may be ordered to  
deliver to him the said [*here name the subject of the specific  
bequest*], or that, etc.

No. 43.

ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

[Alter Form No. 41 thus]—

[Omit paragraph 1 and substitute for paragraph 2] *E. F.*, late of  
, died on or about the                      day of

. By his last will, dated the                      day of  
he appointed *C. D.* his executor, and bequeathed to the  
plaintiff a legacy of                      rupees.

*In paragraph 4 substitute “legacy” for “debt”.*

*Another form.*

(Title.)

*E. F.*, the above-named plaintiff, states as follows :—

1. *A. B.* of *K.* in the                      died on the                      day of  
By his last will, dated the                      day of                      , he appointed the de-  
fendant

(*The First Schedule.—Appendix A.—Pleadings.*)

fendant and *M. N.* [who died in the testator's lifetime] his executors, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the      day of  
The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

- (1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken;
- (2) such further or other relief as the nature of the case may require.

---

No. 44.

EXECUTION OF TRUSTS.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. He is one of the trustees under an instrument of settlement bearing date on or about the      day of      made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [or an instrument of transfer of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and the other creditors of *E. F.*].

2. *A. B.* has taken upon himself the burden of the said trust, and is in possession of [or of the proceeds of] the moveable and immoveable property transferred by the said instrument.

3. *C. D.*

*(The First Schedule.—Appendix A.—Pleadings.)*

3. *C. D.* claims to be entitled to a beneficial interest under the instrument.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or* of part of the said, immoveable property, *or* moveable, *or* the proceeds of the sale of, *or* of part of, the said moveable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C. D.* and such other persons so interested as the Court may direct, or that *C. D.* may show good cause to the contrary.

*[N.B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.]*

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No. 45.

FORECLOSURE OR SALE.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:—

- (a) (date);
  - (b) (names of mortgagor and mortgagee);
  - (c) (sum secured);
  - (d) (rate of interest);
  - (e) (property subject to mortgage);
  - (f) (amount now due);
  - (g) *(if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).*
- (If the plaintiff is mortgagee in possession, add)*

3. The

(*The First Schedule.—Appendix A.—Pleadings.*)

3. The plaintiff took possession of the mortgaged property on the       day of       and is ready to account as mortgagee in possession from that time.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

(1) payment, or in default [sale or] foreclosure [and possession];

[*Where Order 34, rule 6, applies.*]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

---

No. 46.

REDEMPTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:—

(a) (date);

(b) (names of mortgagor and mortgagee);

(c) (sum secured);

(d) (rate of interest);

(e) (property subject to mortgage);

(f) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims.*)

(*If the defendant is mortgagee in possession, add*)

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof].

No. 47.



*(The First Schedule.—Appendix A.—Pleadings.)*

No. 47.

## SPECIFIC PERFORMANCE (No. 1).

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. By an agreement dated the                      day of  
and signed by the defendant, he contracted to buy of  
[or sell to] the plaintiff certain immoveable property therein  
described and referred to, for the sum of                      rupees.

2. The plaintiff has applied to the defendant specifically to  
perform the agreement on his part, but the defendant has not  
done so.

3. The plaintiff has been and still is ready and willing speci-  
fically to perform the agreement on his part of which the defend-  
ant has had notice.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff claims that the Court will order the defendant  
specifically to perform the agreement and to do all acts necessary  
to put the plaintiff in full possession of the said property [or to  
accept a transfer and possession of the said property] and to pay  
the costs of the suit

---

No. 48.

## SPECIFIC PERFORMANCE (No. 2).

*(Title.)**A. B.*, the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , the  
plaintiff and defendant entered into an agreement, in writing,  
and the original document is hereto annexed.

The defendant was absolutely entitled to the immoveable  
property described in the agreement.

2. On the                      day of                      19     , the  
plaintiff tendered                      rupees to the defendant, and  
demanded a transfer of the said property by a sufficient instru-  
ment.

3. On

*(The First Schedule.—Appendix A.—Pleadings.)*

3. On the                      day of                      19                      , the plaintiff again demanded such transfer. [*Or the defendant refused to transfer the same to the plaintiff.*]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

*[As in paras. 4 and 5 of Form No. 1.]*

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*];

(2)                      rupees compensation for withholding the same.

---

No. 49.

PARTNERSHIP.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. He and *C. D.*, the defendant, have been for                      years [*or months*] past carrying on business together under articles of partnership in writing [*or under a deed, or under a verbal agreement*].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [*Or the defendant has committed the following breaches of the partnership articles :—*

(1)

(2)

(3)                      ]

*[As in paras. 4 and 5 of Form No. 1.]*

5. The plaintiff claims—

(1) dissolution of the partnership;

(2) that

*(The First Schedule.—Appendix A.—Pleadings.)*

(2) that accounts be taken ;

(3) that a receiver be appointed.

*(N.B.—In suits for the winding-up of any partnership, omit the claim for dissolution ; and instead insert a paragraph stating the facts of the partnership having been dissolved.)*

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(4) WRITTEN STATEMENTS.

*General defences.*

- Denial.      The defendant denies that *(set out facts)*.  
               The defendant does not admit that *(set out facts)*.  
               The defendant admits that                but says that                .
- Protest      The defendant denies that he is a partner in the defendant firm of                .  
               The defendant denies that he made the contract alleged or any contract with the plaintiff.  
               The defendant denies that he contracted with the plaintiff as alleged or at all.  
               The defendant admits assets but not the plaintiff's claim.  
               The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.
- Limitation.      The suit is barred by article                or article                of the second schedule to the Indian Limitation Act, 1877.                XV of 1877.
- Jurisdiction.      The Court has no jurisdiction to hear the suit on the ground that *(set forth the grounds)*.  
               On the                day of                a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.
- Insolvency.      The defendant has been adjudged an insolvent.  
               The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.
- Minority.      The defendant was a minor at the time of making the alleged contract.
- Payment into Court.      The defendant as to the whole claim *(or as to Rs.                part of the money claimed, or as the case may be)* has paid into Court Rs.                and says that this sum is enough to satisfy the plaintiff's claim *(or the part aforesaid)*.

The

*(The First Schedule.—Appendix A.—Pleadings.)*

The performance of the promise alleged was remitted on Performance  
the (date). remitted.

The contract was rescinded by agreement between the Rescission.  
plaintiff and defendant.

The plaintiff's claim is barred by the decree in suit (*give the Res judicata.*  
*reference*).

The plaintiff is estopped from denying the truth of (*insert Estoppel.*  
*statement as to which estoppel is claimed*) because (*here*  
*state the facts relied on as creating the estoppel*).

Since the institution of the suit, that is to say, on the  
day of (set out facts).

Ground of  
defence  
subsequent  
to institution  
of suit.

## No. 1.

## DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Rs.

[or]

- |                      |                  |             |                |
|----------------------|------------------|-------------|----------------|
| 4. }<br>5. }<br>6. } | Except as to Rs. | , same as { | 1.<br>2.<br>3. |
|----------------------|------------------|-------------|----------------|

7. The defendant [*or A. B., the defendant's agent*] satisfied  
the claim by payment before suit to the plaintiff [*or to C. D.,*  
the plaintiff's agent] on the                      day of                      19 .

8. The defendant satisfied the claim by payment after suit  
to the plaintiff on the                      day of                      19 .

## No. 2.

## DEFENCE IN SUITS ON BONDS.

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day  
according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day  
named and before suit of the principal and interest mentioned  
in the bond.

No. 3.

*(The First Schedule.—Appendix A.—Pleadings.)*

## No. 3.

## DEFENCE IN SUITS ON GUARANTEES.

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

## No. 4.

## DEFENCE IN ANY SUIT FOR DEBT.

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows :—

						Rs.
1907, January 25th	.	.	.	.	.	150
„ February 1st .	.	.	.	.	.	50
					Total .	200

2. As to the whole [*or* as to Rs. , part of the money claimed] the defendant made tender before suit of Rs. and has paid the same into Court.

## No. 5.

## DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to of Street, Calcutta, livery stable keepers employed by the defendant to supply him with carriages and horses ; and the person under whose charge and control the said carriage was, was the servant of the said

2. The defendant does not admit that the said carriage was turned out of Middleton Street either negligently, suddenly or ithout warning, or at a rapid or dangerous pace.

3. The

*(The First Schedule.—Appendix A.—Pleadings.)*

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

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No. 6.

DEFENCE IN ALL SUITS FOR WRONGS.

1. Denial of the several acts [*or matters*] complained of.

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No. 7.

DEFENCE IN SUITS FOR DETENTION OF GOODS.

1. The goods were not the property of the plaintiff.
2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows :—

1907, May 3rd. To carriage of the goods claimed from  
Delhi to Calcutta :—

45 maunds at Rs. 2 per maund . . . . Rs. 90

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No. 8.

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

1. The plaintiff is not the author [*assignee, etc.*].
2. The book was not registered.
3. The defendant did not infringe.

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No. 9.

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

No. 10.

## (The First Schedule.—Appendix A.—Pleadings.)

## No. 10.

## DEFENCES IN SUITS RELATING TO NUISANCES.

1. The plaintiff's lights are not ancient [or deny his other alleged prescriptive rights].

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [or do what is complained of].

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i.e., whether by prescription, grant or what.]

4. The plaintiff has been guilty of laches of which the following are particulars :—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [If other grounds are relied on, they must be stated, e.g., limitation as to past damage.]

## No. 11.

## DEFENCE TO SUIT FOR FORECLOSURE.

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff (if more than one transfer is alleged, say which is denied).

3. The suit is barred by article \_\_\_\_\_ of the second schedule to the Indian Limitation Act, 1877. XV of 1877.

4. The following payments have been made, viz. :—

(Insert date.)	_____	::	Rs.
(Insert date.)	_____	::	1,000
		::	500

5. The plaintiff took possession on the \_\_\_\_\_ of \_\_\_\_\_, and has received the rents ever since.

6. That

*(The First Schedule.—Appendix A.—Pleadings.)*

6. That plaintiff released the debt on the \_\_\_\_\_ of

7. The defendant transferred all his interest to A. B.  
by a document, dated \_\_\_\_\_.

---

No. 12.

## DEFENCE TO SUIT FOR REDEMPTION.

1. The plaintiff's right to redeem is barred by article \_\_\_\_\_ of  
877. the second schedule to the Indian Limitation Act, 1877.

2. The plaintiff transferred all interest in the property to  
A. B.

3. The defendant, by a document dated the \_\_\_\_\_ day of  
\_\_\_\_\_ transferred all his interest in the mortgage-debt and  
property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged  
property, or received the rents thereof.

*(If the defendant admits possession for a time only, he  
should state the time, and deny possession beyond what he  
admits.)*

---

No. 13.

## DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

1. The defendant did not enter into the agreement.

2. A. B. was not the agent of the defendant *(if alleged by  
plaintiff)*.

3. The plaintiff has not performed the following conditions—  
*(Conditions)*.

4. The defendant did not—*(alleged acts of part performance)*.

5. The plaintiff's title to the property agreed to be sold is  
not such as the defendant is bound to accept by reason of the  
following matter—*(State why)*.

6. The agreement is uncertain in the following respects—  
*(State them)*.

7. *(or)* The plaintiff has been guilty of delay.

8. *(or)*



*(The First Schedule.—Appendix A.—Pleadings.)*

8. (or) The plaintiff has been guilty of fraud (or misrepresentation).

9. (or) The agreement is unfair.

10. (or) The agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10) (or as the case may be).

12. The agreement was rescinded under Conditions of Sale, No. 11 (or by mutual agreement).

*(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the Indian Limitation Act, accord and satisfaction, release, fraud, etc.)*

## No. 14.

## DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE.

1. A. B.'s will contained a charge of debts ; he died insolvent ; he was entitled at his death to some immoveable property which the defendant sold and which produced the net sum of Rs. , and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs. .

2. The defendant applied the whole of the said sums and the sum of Rs. which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the                      day of                      19 , and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

## No. 15.

## PROBATE OF WILL IN SOLEMN FORM.

1. The said will and codicil of the deceased were not duly  
executed

*(The First Schedule.—Appendix A.—Pleadings.)*

executed according to the provisions of the Indian Succession Act, 1865 [or of the Hindu Wills Act, 1870].

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [or of the contents of the residuary clause in the said will, *as the case may be*].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims—

- (1) that the Court will pronounce against the said will and codicil propounded by the plaintiff:
- (2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

---

NO 16.

PARTICULARS. (O. 6, r. 5.)

*(Title of suit.)*

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursuant to the order of the of

*(Here set out the particulars ordered in paragraphs if necessary.)*

APPENDIX B.

(*The First Schedule.—Appendix B.—Process.*)

## APPENDIX B.

### PROCESS.

#### No. 1.

SUMMONS FOR DISPOSAL OF SUIT. (O. 5, rr. 1, 5.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS

has instituted a suit against you for  
you are hereby summoned to appear in this Court in person or  
by a pleader duly instructed, and able to answer all material  
questions relating to the suit, or who shall be accompanied by  
some person able to answer all such questions, on the  
day of \_\_\_\_\_ 19\_\_\_\_, at  
o'clock in the \_\_\_\_\_ noon, to answer the claim; and  
as the day fixed for your appearance is appointed for the final  
disposal of the suit, you must be prepared to produce on that  
day all the witnesses upon whose evidence and all the docu-  
ments upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day  
before mentioned, the suit will be heard and determined in your  
absence.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_

*Judge.*

NOTICE.—1. Should you apprehend your witnesses will not  
attend of their own accord, you can have a  
summons from this Court to compel the  
attendance of any witness, and the pro-  
duction of any document that you have a  
right to call upon the witness to produce,  
on applying to the Court and on depositing  
the necessary expenses.

2. If you admit the claim, you should pay the money  
into Court together with the costs of the suit,  
to avoid execution of the decree, which may  
be against your person or property, or both.

No. 2.

*(The First Schedule.—Appendix B.—Process.)*

## No. 2.

## SUMMONS FOR SETTLEMENT OF ISSUES. (O. 5, rr. 1, 5.)

*(Title.)*

To

*[Name, description and place of residence.]*

## WHEREAS

has instituted a suit against you for  
you are hereby summoned to appear in this Court in person, or  
by a pleader duly instructed, and able to answer all material  
questions relating to the suit, or who shall be accompanied by  
some person able to answer all such questions, on the  
day of 19, at o'clock  
in the noon, to answer the claim; and you are  
directed to produce on that day all the documents upon which  
you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day  
before mentioned, the suit will be heard and determined in  
your absence.

GIVEN under my hand and the seal of the Court, this  
day of 19

*Judge.*

NOTICE.—1. Should you apprehend your witnesses will not  
attend of their own accord, you can have a  
summons from this Court to compel the  
attendance of any witness, and the production  
of any document that you have a right to  
call on the witness to produce, on applying  
to the Court and on depositing the necessary  
expenses.

2. If you admit the claim, you should pay the  
money into Court together with the costs of  
the suit, to avoid execution of the decree,  
which may be against your person or property,  
or both.

No. 3.

WHEREAS                 has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs.                 , balance of principal and interest due to him as the                 of a                 of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from                 the

No. 6.

*(The First Schedule.—Appendix B.—Process.)*

## No. 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED  
DEFENDANT. (O. 22, r. 4.)

*(Title.)*

To

WHEREAS the plaintiff instituted a suit in  
this Court on the day of 19  
against the defendant who has since  
deceased, and whereas the said plaintiff has made an application  
to this Court alleging that you are the legal representative of the  
said , deceased, and desiring that you be made  
the defendant in his stead :

You are hereby summoned to attend in this Court on the  
day of 19 at A.M. to  
defend the said suit and, in default of your appearance on the  
day specified, the said suit will be heard and determined in  
your absence.

GIVEN under my hand and the seal of the Court this  
day of 19 .

*Judge.*

## No. 7.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE  
JURISDICTION OF ANOTHER COURT. (O. 5, r. 21.)

*(Title.)*

WHEREAS it is stated that  
<sup>defendant</sup>  
<sub>witness</sub> in the above suit is at present resid-  
ing in : It is ordered  
that a summons returnable on the day of  
19 , be forwarded to the Court of  
for service on the said <sup>defendant</sup>  
<sub>witness</sub> with a duplicate of this  
proceeding.

The court-fee of chargeable in respect to the  
summons has been realized in this Court in stamps.

Dated 19

*Judge.*

No. 8.

*(The First Schedule.—Appendix B.—Process.)*

## No. 8.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A  
PRISONER. (O. 5, r. 24.)*(Title.)*

To

The Superintendent of the Jail at

UNDER the provisions of Order V, rule 24, of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge.*

---

No. 9.ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A  
PUBLIC SERVANT OR SOLDIER. (O. 5, rr. 27, 28.)*(Title.)*

To

UNDER the provisions of Order V, rule 27 (or 28, as the case may be), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge.*

No. 10.



*(The First Schedule.—Appendix B.—Process.)*

## No. 10.

## TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT.

(O. 5, r. 23.)

*(Title.)*

Read proceeding from the \_\_\_\_\_ forwarding  
 \_\_\_\_\_ in Suit No. \_\_\_\_\_ of 19 \_\_\_\_\_ for service on  
 Court. \_\_\_\_\_ of that

Read Serving Officer's endorsement stating that the  
 \_\_\_\_\_ and proof of the above having been duly taken by me  
 on the oath of \_\_\_\_\_ and  
 it is ordered that the \_\_\_\_\_ be  
 returned to the \_\_\_\_\_ with  
 a copy of this proceeding.

*Judge.*

NOTE.—This form will be applicable to process other than summons, the  
 service of which may have to be effected in the same manner.

## No. 11.

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A  
 SUMMONS OR NOTICE. (O. 5, r. 18.)*(Title.)*

The Affidavit of \_\_\_\_\_ son of \_\_\_\_\_  
 I \_\_\_\_\_ make oath  
 and say as follows :— affirm

(1) I am a process-server of this Court.

(2) On the \_\_\_\_\_ day of 19 \_\_\_\_\_ I received a  
summons  
notice issued by the Court of \_\_\_\_\_  
 \_\_\_\_\_ in Suit No.  
 of 19 \_\_\_\_\_ in the said Court, dated the \_\_\_\_\_ day of  
 19 \_\_\_\_\_ for service on

(3) The

*(The First Schedule.—Appendix B.—Process.)*

(3) The said \_\_\_\_\_ was at the  
 time personally known to me, and I served the said summons  
 on him on the \_\_\_\_\_ day of \_\_\_\_\_  
her 19 \_\_\_\_\_ at about \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at  
 by tendering a copy thereof to him and re-  
her  
 quiring his signature to the original summons.  
her notice.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said \_\_\_\_\_ not being personally known to me  
 \_\_\_\_\_ accompanied me to  
 and pointed out to me a person whom  
 he stated to be the said \_\_\_\_\_

\_\_\_\_\_, and I served the said summons on him  
notice her  
 on the \_\_\_\_\_ day of \_\_\_\_\_  
 19 \_\_\_\_\_, at about \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at \_\_\_\_\_ by  
 tendering a copy thereof to him and requiring his signature to  
her her  
 the original summons.  
notice.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process and in whose presence.

(b) Signature of process-server.

or,

(3) The said \_\_\_\_\_ and the house in which he ordinarily  
 resides being personally known to me, I went to the said house,  
 in \_\_\_\_\_ and there on the \_\_\_\_\_ day of \_\_\_\_\_  
 19 \_\_\_\_\_, at about \_\_\_\_\_ o'clock in the \_\_\_\_\_  
 noon, I did not find the said \_\_\_\_\_

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

(3) One \_\_\_\_\_ accompanied me to \_\_\_\_\_ and  
 there

*(The First Schedule.—Appendix B.—Process.)*

there pointed out to me                      which he said was the house  
in which                      ordinarily resides. I did not find the said  
there.

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served,  
with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

*If substituted service has been ordered, state fully and exactly  
the manner in which the summons was served with special refer-  
ence to the terms of the order for substituted service.*

Sworn by the said                      before me this  
Affirmed                      day of.                      19 .

*Empowered under section 139 of the Code of  
Civil Procedure, 1908, to administer the  
oath to deponents.*

---

No. 12.

NOTICE TO DEFENDANT. (O. 9, r. 6.)

(Title.)

To

*(Name, description and place of residence.)*

WHEREAS this day was fixed for the hearing of the above suit  
and a summons was issued to you and the plaintiff has appeared  
in this Court and you did not so appear, but from the return of  
the Nazir it has been proved to the satisfaction of the Court that  
the said summons was served on you but not in sufficient time to  
enable you to appear and answer on the day fixed in the said  
summons ;

Notice is hereby given to you that the hearing of the suit  
is adjourned this day and that the                      day of                      19                      is  
now fixed for the hearing of the same ; in default of your appear-  
ance on the day last mentioned the suit will be heard and de-  
termined in your absence.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19

*Judge.*

No. 13.

*(The First Schedule.—Appendix B. —Process.)*

## No. 13.

SUMMONS TO WITNESS. (O. 16, rr. 1, 5.)

*(Title.)*

To

WHEREAS your attendance is required to  
 on behalf of the \_\_\_\_\_ in the above suit,  
 you are hereby required [personally] to appear before this Court  
 on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
 at \_\_\_\_\_ o'clock in the forenoon, and to bring with you [or  
 to send to this \_\_\_\_\_ Court].

A sum of Rs. \_\_\_\_\_, being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
 of \_\_\_\_\_ 19\_\_\_\_

*Judge.*

NOTICE.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs. \_\_\_\_\_ will be tendered to you for each day's attendance beyond the day specified.

## No. 14.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.

(O. 16, r. 10.)

*(Title.)*

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the  
 \_\_\_\_\_  
 witness

*(The First Schedule.—Appendix B.—Process.)*

witness in the manner prescribed by law : and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons : This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the       day of       19       at       o'clock in the forenoon and from day to day until he shall have leave to depart ; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this  
day of       19       .

*Judge.*

---

No. 15.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.  
(O. 16, r. 10.)

*(Title.)*

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons : This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued, requiring the attendance of the witness in this Court on the       day of       19       at       o'clock in the forenoon, and from day to day until he shall have leave to depart ; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this       day  
of       19      

*Judge.*

No. 16.

*(The First Schedule.—Appendix B.—Process.)*

## No. 16.

## WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS.

(O. 16, r. 10.)

*(Title.)*

To

The Bailiff of the Court.

WHEREAS the witness  
cited by  
has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment property belonging to the said witness to the value of and to submit a return, accompanied with an inventory thereof, within days.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Judge.*

## No. 17.

## WARRANT OF ARREST OF WITNESS. (O. 16, r. 10.)

*(Title.)*

To

The Bailiff of the Court.

WHEREAS has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons]; You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19 with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day  
of 19 .

*Judge.*

No. 18.

*(The First Schedule.—Appendix B.—Process.)*

No. 18.

WARRANT OF COMMITTAL. (O. 16, r. 16.)

*(Title.)*

To

The Officer in charge of the Jail at

WHEREAS the plaintiff (*or* defendant) in the above-named suit has made application to this Court that security be taken for the appearance of \_\_\_\_\_ to give evidence (*or* to produce a document), on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_; and whereas the Court has called upon the said \_\_\_\_\_ to furnish such security, which he has failed to do; This is to require you to receive the said \_\_\_\_\_ into your custody in the civil prison and to produce him before this Court at \_\_\_\_\_ on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

*Judge.*

No. 19.

WARRANT OF COMMITTAL. (O. 16, r. 18.)

*(Title.)*

To

The Officer in charge of the Jail at

WHEREAS \_\_\_\_\_, whose attendance is required before this Court in the above-named case to give evidence (*or* to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (*or* defendant), the said \_\_\_\_\_ cannot give such evidence (*or* produce such document); and whereas the Court has called upon the said \_\_\_\_\_ to give security for his appearance on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_, at \_\_\_\_\_ which he has failed to do; This is to require you to receive the said \_\_\_\_\_ into your custody in the civil prison and to produce him before this Court at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

*Judge.***APPENDIX C.**

(The First Schedule.—Appendix C.—Discovery, Inspection and Admission.)

## APPENDIX C.

### DISCOVERY, INSPECTION AND ADMISSION.

#### No. 1.

ORDER FOR DELIVERY OF INTERROGATORIES. (O. 11, r. 1.)

In the Court of

Civil Suit No.                      of                      19                      .

*A.B.* ...                      ...                      ...                      *Plaintiff,*

*against*

*C.D., E.F. and G.H.* ...                      ...                      *Defendants.*

Upon hearing                      and upon reading the affidavit of  
                     filed the                      day of                      19                      ; It is  
 ordered that the                      be at liberty to deliver to  
 the                      interrogatories in writing, and that the said  
                     do answer the interrogatories as prescribed by  
 Order XI, rule 8, and that the costs of this application be

#### No. 2.

INTERROGATORIES. (O. 11, r. 4.)

(Title as in No. 1, *supra*.)

Interrogatories on behalf of the above-named [*plaintiff or defendant C.D.*] for the examination of the above-named [*defendant's E. F. and G. H. or plaintiff*].

1. Did not, etc.

2. Has not, etc.

etc.,                      etc.,                      etc.

[The defendant *E.F.* is required to answer the interrogatories  
                     numbered                      .]

[The defendant *G. H.* is required to answer the interrogatories  
                     numbered                      .]

No. 3.



### 3. I

(*The First Schedule.—Appendix C.—Discovery, Inspection and Admission.*)

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when and what has become of them, and in whose possession they now are*].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

---

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION.

(O. 11, r. 14.)

(*Title as in No. 1, supra.*)

Upon hearing \_\_\_\_\_ and upon reading the affidavit  
of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_;  
It is ordered that the \_\_\_\_\_ do, at all seasonable times,  
on reasonable notice, produce at \_\_\_\_\_, situate at  
\_\_\_\_\_, the following documents, namely,  
\_\_\_\_\_, and that the \_\_\_\_\_ be at liberty to inspect  
and peruse the documents so produced, and to make notes of  
their contents. In the meantime it is ordered that all further  
proceedings be stayed and that the costs of this application be

---

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. 11, r. 16.)

(*Title as in No. 1, supra.*)

Take notice that the [*plaintiff or defendant*] requires you to  
produce for his inspection the following documents referred to  
in

(*The First Schedule.—Appendix C.—Discovery, Inspection and Admission.*)

in your [plaint or written statement or affidavit dated the  
day of 19 ].

[*Describe documents required.*]

X. Y., Pleader for the

To Z., Pleader for the

---

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. 11, r. 17.)

(*Title as in No. 1, supra.*)

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [*except the documents numbered in that notice*] at [*insert place of inspection*] on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of documents mentioned in your notice of the day of 19 , on the ground that [*state the ground*]:—

---

No. 9.

NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3.)

(*Title as in No. 1, supra.*)

Take notice that the plaintiff [*or defendant*] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his pleader or agent, at on between the hours of

; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively,

(*The First Schedule.—Appendix C.—Discovery, Inspection and Admission.*)

respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., pleader [or agent] for plaintiff  
[or defendant].

To E. F., pleader [or agent] for defendant [or plaintiff].

[Here describe the documents and specify as to each document whether it is original or a copy.]

---

No. 10.

NOTICE TO ADMIT FACTS. (O. 12, r. 5.)

(*Title as in No. 1, supra.*)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., pleader [or agent] for plaintiff [or defendant].

To E. F., pleader [or agent] for defendant [or plaintiff].

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

---

No. 11.

ADMISSION OF FACTS PURSUANT TO NOTICE. (O. 12, r. 5.)

(*Title as in No. 1, supra.*)

The defendant [or plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if  
any,

(*The First Schedule.—Appendix C.—Discovery, Inspection and Admission.*)

any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit :

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [*or plaintiff*] on any other occasion or by any one other than the plaintiff [*or defendant, or party requiring the admission*].

E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*].

To G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on the 1st January, 1890.	1.
2. That he died intestate . . .	2.
3. That N. was his lawful son . . .	3. But not that he was his only lawful son.
4. That O. died . . . . .	4. But not that he died on the 1st April, 1896.
5. That O. was never married . . .	5.

No. 12.

NOTICE TO PRODUCE (GENERAL FORM). (O. 12, r. 8.)

(*Title as in No. 1, supra.*)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly

G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

To E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*].

(The First Schedule.—Appendix D.—Decrees.)

## APPENDIX D.

### DECREES.

No. 1.

DECREE IN ORIGINAL SUIT. (O. 20, IT. 6, 7.)

(Title.)

Claim for

THIS suit coming on this day for final disposal before  
in the presence of  
for the plaintiff and of for the defendant, it  
is ordered and decreed that  
and that the sum of Rs. be paid by the  
to the on account of the costs of this suit,  
with interest thereon at the rate of per cent. per annum from  
this date to date of realization.

GIVEN under my hand and the seal of the Court, this  
day of 19

Judge.

### Costs of Suit.

Plaintiff.				Defendant.			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint .				Stamp for power .			
2. Do. for power .				Do. for petition .			
3. Do. for exhibits .				Pleader's fee .			
4. Pleader's fee on Rs. .				Subsistence for wit-			
5. Subsistence for wit-				nesses .			
nesses .				Service of process .			
6. Commissioner's fee .				Commissioner's fee .			
7. Service of process .							
Total .				Total .			

No. 2.

*(The First Schedule.—Appendix D.—Decrees.)*

## No. 2.

## SIMPLE MONEY DECREE. (Section 34.)

*(Title.)*

Claim for

THIS suit coming on this day for final disposal before  
in the presence of  
for the plaintiff and of for the defend-  
ant, it is ordered that the do pay to the  
the sum of Rs. with interest thereon at the rate of  
per cent. per annum from to the date of realiza-  
tion of the said sum and do also pay Rs. , the costs of  
this suit, with interest thereon at the rate of per cent. per  
annum from this date to the date of realization.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Judge.**Costs of Suit.*

Plaintiff.				Defendant.			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint	.			Stamp for power	.		
2. Do. for power	.			Do. for petition	.		
3. Do. for exhibits	.			Pleader's fee	.		
4. Pleader's fee on Rs.	.			Subsistence for wit- nesses	.		
5. Subsistence for wit- nesses	.			Service of process	.		
6. Commissioner's fee	.			Commissioner's fee	.		
7. Service of process	.						
Total	.			Total	.		

## No. 3.

## PRELIMINARY DECREE FOR FORECLOSURE. (O. 34, r. 2.)

*(Title.)*

THIS suit coming on this day, etc. ; It is hereby declared that  
the amount due to the plaintiff on account of principal, interest  
and

*(The First Schedule.—Appendix D.—Decrees.)*

and costs calculated up to the                      day of                      19   , is  
Rs.                      ;

And it is decreed as follows :—

(1) That if the defendant pays into Court the amount so declared due on or before the said           day of           19   , the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him. [*Where the plaintiff claims by derived title add or by those under whom he claims.*] [*Where the plaintiff is in possession add and shall put the defendant in possession of the property.*]

(2) That if such payment is not made on or before the said           day of           19   the defendant shall be debarred from all right to redeem the property.

*Schedule.**Description of the mortgaged property.*


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No. 4.

PRELIMINARY DECREE FOR SALE. (O. 34, r. 4.)

*(Title.)*

THIS suit coming on this day, etc. ; It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the           day of           19   is Rs.           , and that such amount shall carry interest at the rate of           per cent. per annum until realization ; and it is decreed as follows :—

(1) That if the defendant pays into Court the amount so declared due on or before the said           day of           19   , the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgagee and from all incumbrances created by the plaintiff or any person claiming under him. [*Where the plaintiff claims by derived title add or by those under whom he claims.*] [*Where the plaintiff is in possession add and shall put the defendant in possession of the property.*]

(2) That



*(The First Schedule.—Appendix D.—Decrees.)*

(2) That if such payment is not made on or before the said day of 19 the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid together with subsequent interest and subsequent costs, and that the balance, if any, be paid to the defendant.

(3) That if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

*Schedule.**Description of the mortgaged property.*

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No. 5.

## PRELIMINARY DECREE FOR REDEMPTION. (O. 34, r. 7.)

*(Title.)*

THIS suit coming on this day, etc. ; It is hereby declared that the amount due to the defendant on account of principal, interest and costs calculated up to the day of 19 is Rs. ;

And it is decreed as follows :—

(1) That if the plaintiff pays into Court the amount so declared due on or before the said day of 19, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him. [Where the defendant claims by derived title add *or by those under whom he claims.*] [Where the defendant is in possession add *and shall put the plaintiff in possession of the property.*]

(2) That if such payment is not made on or before the said day of 19, the plaintiff shall be debarred from all right to redeem the property. [If the mortgage is simple or usufructuary, substitute *the property shall be sold.*]

*Schedule.**Description of the mortgaged property.*

## No. 6.

*(The First Schedule.—Appendix D.—Decrees.)*

## No. 6.

DECREE FOR FORECLOSURE.—FIRST MORTGAGEE *v.* SECOND MORTGAGEE AND MORTGAGOR.—SUCCESSIVE PERIODS FOR REDEMPTION.

*(Title.)*

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of 19 (a) is Rs. *x*, and that on the day of 19 (b) there will be due to the plaintiff for interest the further sum of Rs. , making in all Rs. *y* ; and it is further declared that on the day of 19 (b) there will be due to the first defendant on account of principal, interest and costs Rs. *z* ;

And it is decreed as follows :—

(1) That if the first defendant pays into Court the said sum of Rs. *x* on or before the said day of 19 (a) the plaintiff shall deliver up, etc. (as in Form No. 3).

(2) That in default of the first defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(3) That in case of such foreclosure and if the second defendant pays into Court the said sum of Rs. *y*, on or before the day of 19 , (b) the plaintiff shall deliver up, etc. (as in Form No. 3).

(4) That in default of the second defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(5) That in case the first defendant shall redeem the mortgaged property, if the second defendant pays into Court the said sums of Rs. *y* and Rs. *z* on or before the day of 19 , (b) the first defendant shall deliver up, etc. (as in Form No. 3).

(6) That in default of the second defendant paying the said sums on or before the said day he shall be debarred from all right to redeem the property. [Where the second defendant is in possession add *and shall put the first defendant in possession of the property.*]

No. 7.

(a) Insert a day within six months from the date of decree.

(b) Insert a day within three months from the date mentioned in (a).

*(The First Schedule.—Appendix D.—Decrees.)*

## No. 7.

DECREE FOR SALE.—FIRST MORTGAGEE *v.* SECOND MORTGAGEE  
AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

*(Title.)*

[It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of 19 is Rs. *x* and that on the said day there will be due to the first defendant on account of principal, interest and costs Rs. *y* ;

And it is decreed as follows :—

(1) That if the defendants or either of them pay into Court the said sum of Rs. *x* on or before the said day of 19 the plaintiff shall deliver up, etc. (as in Form No. 4).

(2) That if payment of the said sum is not made on or before the day of 19 the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court to the credit of this suit, and applied, first, in payment to the plaintiff of the said sum of Rs. *x* and such subsequent interest and costs as may be allowed by the Court; secondly, in payment to the first defendant of the said sum of Rs. *y* and such subsequent interest and costs as aforesaid; and that the balance, if any, be paid to the second defendant.

(3) That in case the defendants or either of them shall pay the said sum of Rs. *x* as aforesaid he or they shall be at liberty to apply to the Court that the plaintiff's mortgage may be kept alive for the benefit of the person making the said payment or otherwise as he or they may be advised.

(4) That if the net proceeds of the sale are insufficient to pay the said sum of Rs. *x* and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

## No. 8.

DECREE FOR SALE.—SECOND MORTGAGEE *v.* FIRST MORTGAGEE  
AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

*(Title.)*

[Insert declarations of the amounts due to the plaintiff *y* and to the first defendant Rs. *x* as in Form No. 7.]

And

*(The First Schedule.—Appendix D.—Decrees.)*

And it is decreed as follows:—

(1) That if the plaintiff or the second defendant pays into Court the said sum of Rs. *x* on or before the said day of 19 , the first defendant shall deliver up, etc. (as in Form No. 4).

(2) That if payment of the said sum is not made on or before the day of 19 , the first defendant shall be at liberty to apply that the suit be dismissed or for the sale of the mortgaged property; and in case he shall apply for a sale the mortgaged property or a sufficient part thereof shall be sold free from the incumbrances of the plaintiff and first defendant, and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be paid into Court and applied, first, in payment to the first defendant of the said sum of Rs. *x* and such subsequent interest and costs as may be allowed by the Court: secondly, in payment to the plaintiff of the said sum of Rs. *y* and such subsequent interest and cost as aforesaid: and that the balance, if any, be paid to the second defendant.

(3) That if the plaintiff shall pay the said sum of Rs. *x* into Court on or before the day of 19 , the second defendant shall be at liberty to pay into Court the said sum and the sum of Rs. *y* on or before the day of 19 , and thereupon the plaintiff shall deliver, etc. (as in Form No. 4).

(4) That if the plaintiff shall pay the said sum as aforesaid but the second defendant shall fail to pay the said sums as aforesaid, the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be applied in payment to the plaintiff of the said sums of Rs. *x* and Rs. *y* and such subsequent interest and costs as may be allowed by the Court, and that the balance, if any, be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the said sums, interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

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No. 9.

DECREE FOR SALE.—SUB-MORTGAGEE *v.* MORTGAGEE AND MORTGAGOR, THE AMOUNT OF THE ORIGINAL MORTGAGE EXCEEDING THAT OF THE SUB-MORTGAGE.

*(Title.)*

[Insert declarations of the amounts due to the plaintiff Rs. *x* and to the first defendant Rs. *y* as in Form No. 7.]

And

And it is decreed as follows :—

(5) That if the net proceeds of the sale are insufficient to pay the aforesaid sums with further interest and costs, the plaintiff or the first defendant, as the case may be, shall be at liberty to apply for a personal decree for the amount of the balance.

(Title.)

UPON reading the decree passed in the above suit on the  
day of                19   , and the application of the  
   plaintiff

*(The First Schedule.—Appendix D.—Decrees.)*

plaintiff dated the                      day of                      19                      , and after hearing                      pleader for the plaintiff and                      pleader for the defendant, and it appearing that the payment directed by the said decree has not been made :

It is hereby decreed as follows :—

That the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property set out and described in the schedule hereunto annexed. [Where the defendant is in possession add *and shall put the plaintiff in possession of the said property.*]

*Schedule.**Description of the mortgaged property.*

## No. 11.

DECREE AGAINST MORTGAGOR PERSONALLY. (O. 34, r. 6.)

*(Title.)*

WHEREAS the net proceeds of the sale held under the final decree for sale passed in this suit on the                      day of

19                      , and now in Court to the credit of this suit, amount to Rs. *y*, and there is now due to the plaintiff the sum of Rs. *x* mentioned in the said decree together with the further sum of Rs.                      interest thereon at the rate of 6 per cent. per annum from the                      day of                      19                      to this day, and also the sum of Rs.                      for his costs of this suit subsequent to the decree, making a balance due to the plaintiff of Rs. *z* ; And whereas it appears to this Court that the defendant is personally liable for the said balance ;

It is hereby decreed as follows :—

(1) That the said sum of Rs. *y* be paid out of Court to the plaintiff.

(2) That the defendant do pay to the plaintiff the said sum of Rs. *z* with interest thereon at the rate of 6 per cent. per annum from this day to the date of realization of the said sum.

## No. 12.

DECREE FOR RECTIFICATION OF INSTRUMENT.

*(Title.)*

It is hereby declared that the                      dated the                      day  
of

*(The First Schedule.—Appendix D.—Decrees.)*

of                    19    , does not truly express the intention of the parties to such

And it is decreed that the said                    be rectified by

\_\_\_\_\_

No. 13.

## DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

*(Title.)*

It is hereby declared that the                    , dated the day of                    19    , and made between                    and                    , is void as against the plaintiff and all other the creditors, if any, of the defendant

\_\_\_\_\_

No. 14.

## INJUNCTION AGAINST PRIVATE NUISANCE.

*(Title.)*

LET the defendant                    , his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

\_\_\_\_\_

No. 15.

## INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL.

*(Title.)*

LET the defendant                    , his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in                    any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 16.

*(The First Schedule.—Appendix D.—Decrees.)*

## No. 16.

## INJUNCTION RESTRAINING USE OF PRIVATE ROAD.

*(Title.)*

LET the defendant , his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at , the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

## No. 17.

## PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT.

*(Title.)*

It is ordered that the following accounts and inquiries be taken and made ; that is to say—

*In creditor's suit—*

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

*In suits by legatees—*

2. That an account be taken of the legacies given by the testator's will.

*In suits by next-of-kin—*

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

4. An account of the funeral and testamentary expenses.

5. An



*(The First Schedule.—Appendix D.—Decrees.)*

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the                      day of                      next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the                      \* shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the                      \* (and shall give security by bond for the due performance of his duties to the amount of                      rupees).

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

(a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death ;

(b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof ;

(c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions

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\* Here insert name of proper officer.

*(The First Schedule.—Appendix D.—Decrees.)*

ditions and contracts of sale subject to the approval of the

\* and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the \* shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the \* to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the \* do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

15. And, lastly, it is ordered that this suit [*or proceeding*] stand adjourned for making final decree to the day of .

[Such part only of this decree is to be used as is applicable to the particular case.]

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No. 18.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

(Title.)

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the day of , amounting together to the sum of Rs.

2. Let the \* of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs.

ordered to be paid into Court as aforesaid, as follows :—

(a) The costs of the plaintiff to Mr. , his attorney

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\* Here insert name of proper officer.

*(The First Schedule.—Appendix D.—Decrees.)*

attorney [or pleader] or and the costs of the defendant to Mr. . , his attorney [or pleader].

- (b) And *(if any debts are due)* with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the \*, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

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No. 19.

[PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

*(Title.)*

1. It is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff;
2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;
3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the \*, pay to the plaintiff the amount of what the \* shall certify to be due for principal and interest;
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

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No. 20.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

*(Title.)*

1. LET the \* of the said Court tax the costs of the plaintiff

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\* Here insert name of proper officer.

*(The First Schedule.—Appendix D.—Decrees.)*

plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. \_\_\_\_\_, the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said

\*, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. \_\_\_\_\_, after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

- (a) Let the defendant, within one week after the taxation of the said costs by the \_\_\_\_\_ \* as aforesaid, pay one-third share of the said residue to the plaintiffs *A. B.*, and *C. D.*, his wife, in her right as the sister and one of the next-of-kin of the said *E. F.*, the intestate.
- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said *E. F.*, the intestate.
- (c) And let the defendant, within one week after the taxation of the said costs by the \_\_\_\_\_ \* as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

— — — — —

No. 21.

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

*(Title.)*

It is declared that the proportionate shares of the parties in the partnership are as follows:—

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the \_\_\_\_\_ day of \_\_\_\_\_, and it is ordered that the dissolution thereof as from that day be advertised in the \_\_\_\_\_ Gazette, etc.

And

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\* Here insert name of proper officer.

*(The First Schedule.—Appendix D.—Decrees.)*

And it is ordered that \_\_\_\_\_ be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property and effects now belonging to the said partnership ;

2. An account of the debts and liabilities of the said partnership ;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the \_\_\_\_\_ \* may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the \_\_\_\_\_ day of \_\_\_\_\_, and that the

\* do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the \_\_\_\_\_ day of \_\_\_\_\_.

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the \_\_\_\_\_ day of \_\_\_\_\_.

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No. 22.

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP  
AND THE TAKING OF PARTNERSHIP ACCOUNTS.

*(Title.)*

It is ordered that the fund now in Court, amounting to the sum of Rs. \_\_\_\_\_, be applied as follows :—

1. In payment of the debts due by the partnership set forth in the certificate of the \_\_\_\_\_ \* amounting in the whole to Rs. \_\_\_\_\_

2. In

---

\* Here insert name of proper officer.

*(The First Schedule.—Appendix D.—Decrees.)*

2. In payment of the costs of all parts in this suit, amounting to Rs.

*[These costs must be ascertained before the decree is drawn up.]*

3. In payment of the sum of Rs. \_\_\_\_\_ to the plaintiff as his share of the partnership-assets, of the sum of Rs. \_\_\_\_\_, being the residue of the said sum of Rs. \_\_\_\_\_ now in Court, to the defendant as his share of the partnership-assets.

*[Or, And that the remainder of the said sum of Rs. \_\_\_\_\_ be paid to the said plaintiff (or defendant) in part payment of the sum of Rs. \_\_\_\_\_ certified to be due to him in respect of the partnership-accounts.]*

4. And that the defendant [*or plaintiff*] do on or before the \_\_\_\_\_ day of \_\_\_\_\_ pay to the plaintiff [*or defendant*] the sum of Rs. \_\_\_\_\_ being the balance of the said sum of Rs. \_\_\_\_\_ due to him, which will then remain due.

## No. 23.

## DECREE FOR RECOVERY OF LAND AND MESNE PROFITS.

*(Title.)*

It is hereby decreed as follows :—

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Rs. \_\_\_\_\_ with interest thereon at the rate of \_\_\_\_\_ per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

*Or*

2. That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

*Schedule.*

**APPENDIX E.**

(The First Schedule.—Appendix E.—Execution.)

## APPENDIX E.

### EXECUTION.

#### No. 1.

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT  
SHOULD NOT BE RECORDED AS CERTIFIED.

(O. 21, r. 2.)

(Title.)

To

WHEREAS in execution of the decree in the above-named suit  
has applied to this Court that the sum  
of Rs. recoverable under the decree has been  
paid  
adjusted and should be recorded as certified, this is to give  
you notice that you are to appear before this Court on the  
day of 19 , to show  
cause why the payment  
adjustment aforesaid should not be recorded  
as certified.

GIVEN under my hand and the seal of the Court, this  
day of 19

Judge.

#### No. 2.

PRECEPT. (Section 46.)

(Title.)

UPON hearing the decree-holder it is ordered that this pro-  
cept be sent to the Court of at

under section 46 of the Code of Civil Procedure, 1908, with  
directions to attach the property specified in the annexed  
schedule and to hold the same pending any application which  
may be made by the decree-holder for execution of the decree.

Schedule.

Dated the

day of

19

Judge.

No. 3.

*(The First Schedule.—Appendix E.—Execution.)*

## No. 3.

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT.  
(O. 21, r. 6.)*(Title.)*

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of \_\_\_\_\_ at \_\_\_\_\_ for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

*Ordered :*

That a copy of this order be sent to \_\_\_\_\_ with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

*Judge.*

## No. 4.

## CERTIFICATE OF NON-SATISFACTION OF DECREE. (O. 21, r. 6.)

*(Title.)*

CERTIFIED that no (1) satisfaction of the decree of this Court in Suit No. \_\_\_\_\_ of 19 \_\_\_\_\_, a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

*Judge.*

(1) If partial, strike out "no" and state to what extent

No. 5.





## (The First Schedule.—Appendix E.—Execution.)

## No. 6.

## APPLICATION FOR EXECUTION OF DECREE. (O. 21, r. 11.)

In the Court of

decree-holder, hereby apply for execution of the decree herein below set forth :—

1	2	3	4	5	6	7	8	9	10
No. of suit.	Names of parties.	Date of decree.	Whether any appeal preferred from decree.	Payment or adjustment made, if any.	Previous application, if any, with date and result.	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.	Amount of costs, if any, awarded.	Against whom to be executed.	Mode in which the assistance of the Court is required.
789 of 1897.	A. B.—Plaintiff C. D.—Defendant.	October 11th, 1897.	No.	None.	Rs. 72-4 recorded on application, dated the 4th March, 1899.	Rs. 314-8-2 principal [interest at 6 per cent. per annum, from date of decree till payment].	Rs. A. P. As awarded in the decree . 47 10 4 Subsequently incurred . . 8 2 0 Total . 55 12 4	Against the defendant C. D.	<p>[When attachment and sale of moveable property is sought.]</p> <p>I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me</p> <p>[When attachment and sale of immovable property is sought.]</p> <p>I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me.</p>

I declare that what is stated herein is true to the best of my knowledge and belief.

Signed

, decree-holder.

Dated the

day of

19

[When

*(The First Schedule.—Appendix E.—Execution.)**[When attachment and sale of immoveable property is sought.]**Description and Specification of Property.*

The undivided one-third share of the judgment-debtor in a house situated in the village of \_\_\_\_\_, value Rs. 40, and bounded as follows :—

East by G's house ; west by H's house ; south by public road ; north by private lane and J's house.

I \_\_\_\_\_ declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed \_\_\_\_\_, decree-holder.

No. 7.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.  
(O. 21, r. 22.)

(Title.)

To

WHEREAS \_\_\_\_\_ has made application to this Court for execution of decree in Suit No. \_\_\_\_\_ of 19 \_\_\_\_\_ on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Judge.  
No. 8.

## (The First Schedule.—Appendix E.—Execution.)

## No. 8.

## WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY. (O. 21, r. 30.)

(Title.)

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_ was ordered by decree of this Court  
passed on the \_\_\_\_\_ day of \_\_\_\_\_ 19, in Suit No.

DECREE.			
Principal . . .			
Interest . . .			
Costs . . .			
Costs of execution			
Further interest .			
Total .			

of \_\_\_\_\_ 19, to pay to  
the plaintiff the sum of Rs.

as noted in the margin; and  
whereas the said sum of  
Rs. \_\_\_\_\_ has not been paid;

These are to command you to  
attach the moveable property  
of the said

as set forth in the schedule  
hereunto annexed, or which  
shall be pointed out to you

by the said  
said

shall pay to you the said sum of Rs.

together with Rs. \_\_\_\_\_, the costs of this  
attachment, to hold the same until further orders from this  
Court.

You are further commanded to return this warrant on or  
before the \_\_\_\_\_ day of \_\_\_\_\_ 19, with  
an endorsement certifying the day on which and manner in  
which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19

Schedule,

Judge  
No. 9

TAKE notice that on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
the decree-holder in the above suit presented  
an application to this Court that the Court may execute on  
your behalf a deed of \_\_\_\_\_, whereof a draft is here-  
unto annexed, of the immovable property specified hereunder,  
and that the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ is  
appointed

*(The First Schedule.—Appendix E.—Execution.)*

appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

*Description of Property.*

GIVEN under my hand and the seal of the Court, this  
day of     19     .

*Judge.*

No. 11.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC.  
(O. 21, r. 35.)

*(Title.)*

To

THE Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of  
has been decreed to     , the plaintiff  
in this suit; You are hereby directed to put the said  
in possession of the same, and you are hereby authorized to  
remove any person bound by the decree who may refuse to  
vacate the same.

GIVEN under my hand and the seal of the Court, this  
day of     19     .

*Schedule.*

*Judge.*

No. 12.



*(The First Schedule.—Appendix E.—Execution.)*

said judgment-debtor shall pay to you the said sum of Rs. together with Rs.                      for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the                      day of 19 , with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of                      19 .

*Judge.*

---

No. 14.

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL.  
(O. 21, r. 40.)

*(Title.)*

To

The Officer in charge of the Jail at

WHEREAS                      who has been brought before this Court this                      day of 19 , under a warrant in execution of a decree which was made and pronounced by the said Court on the                      day of 19 , and by which decree it was ordered that the said                      should pay                      ; And whereas the said                      has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody ; You are hereby, in the name of the King-Emperor of India, commanded and required to take and receive the said

                    into the civil prison and keep him imprisoned therein for a period not exceeding                      or until the said decree shall be fully satisfied, or the said                      shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908 ;  
and



*(The First Schedule.—Appendix E.—Execution.)*

and the Court does hereby fix annas  
 per diem as the rate of the monthly allowance for the subsistence of the said  
 during his confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this  
 day of 19 .

*Judge.*

---

No. 15.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE. (Sections 58, 59.)

*(Title.)*

To

The Officer in charge of the Jail at

UNDER orders passed this day, you are hereby directed to set free judgment-debtor now in your custody.

Dated

*Judge.*

---

No. 16.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF. (O 21, r. 46.)

*(Title.)*

To

WHEREAS  
 has failed to satisfy a decree passed against

on  
the

WHEREAS  
has failed to satisfy a decree passed against \_\_\_\_\_ on the \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ in Suit  
No. \_\_\_\_\_ of 19 \_\_\_\_\_, in favour of \_\_\_\_\_  
for Rs. \_\_\_\_\_; It is ordered that the defend-  
ant be, and is hereby, prohibited and restrained, until the  
further order of this Court, from receiving from you a certain  
\_\_\_\_\_ debt

*(The First Schedule.—Appendix E.—Execution.)*

debt alleged now to be due from you to the said defendant, namely,  
 and that you, the said \_\_\_\_\_, be, and  
 you are hereby, prohibited and restrained, until the further order  
 of this Court, from making payment of the said debt, or any  
 part thereof, to any person whomsoever or otherwise than into  
 this Court.

GIVEN under my hand and the seal of the Court, this  
 day of \_\_\_\_\_ 19\_\_\_\_

*Judge.*

\_\_\_\_\_  
 No. 18.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF  
 SHARES IN THE CAPITAL OF A CORPORATION. (O. 21, r.  
 46.)

*(Title.)*

To \_\_\_\_\_ Defendant and to  
 \_\_\_\_\_, Secretary of \_\_\_\_\_ Corporation.  
 WHEREAS \_\_\_\_\_ has failed to satisfy a decree  
 passed against \_\_\_\_\_ on the  
 day of \_\_\_\_\_ 19\_\_\_\_, in Suit No.  
 of 19\_\_\_\_, in favour of \_\_\_\_\_, for Rs. \_\_\_\_\_;  
 It is ordered that you, the defendant, be, and you are hereby,  
 prohibited and restrained, until the further order of this Court,  
 from making any transfer of \_\_\_\_\_ shares in the  
 aforesaid Corporation, namely, \_\_\_\_\_, or from  
 receiving payment of any dividends thereon; and you,  
 \_\_\_\_\_, the Secretary of the said Corporation, are hereby  
 prohibited and restrained from permitting any such transfer  
 or making any such payment.

GIVEN under my hand and the seal of the Court, this  
 day of \_\_\_\_\_ 19\_\_\_\_

*Judge.*

No. 19.

*(The First Schedule.—Appendix E.—Execution.)*

## No. 19.

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF  
RAILWAY COMPANY OR LOCAL AUTHORITY. (O. 21, r. 48.)*(Title.)*

To

WHEREAS  
 judgment-debtor in the above-named case, is a (*describe office  
 of judgment-debtor*) receiving his salary (*or* allowances) at your  
 hands; and whereas , decree-holder  
 in the said case, has applied in this Court for the attachment  
 of the salary (*or* allowances) of the said to  
 the extent of due to him under the decree;  
 You are hereby required to withhold the said sum of  
 from the salary of the said in monthly  
 instalments of and to remit the said sum (*or*  
 monthly instalments) to this Court.

GIVEN under my hand and the seal of the Court, this  
 day of 19 .

*Judge.*

## No. 20.

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT.  
(O. 21, r. 51.)*(Title.)*

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the  
 day of 19 , for the  
 attachment of ;  
 You are hereby directed to seize the said  
 and bring the same into Court.

GIVEN under my hand and the seal of the Court, this  
 day of 19 .

*Judge.*

No. 21.

(The First Schedule.—Appendix E.—Execution.)

No. 21.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT. (O. 21, r. 52.)

(Title.)

To

SIR,

The plaintiff having applied, under rule 52 of Order XXI of the Code of Civil Procedure, 1908, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed, on what account, etc.*), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

Judge.

Dated the

day of

19

—

No. 22.

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT. (O. 21, r. 53.)

(Title.)

To

The Judge of the Court of

SIR,

I have the honour to inform you that the decree obtained in your Court on the day of

*(The First Schedule.—Appendix E.—Execution.)*

of \_\_\_\_\_ 19 , by  
 in Suit No. \_\_\_\_\_ of 19 , in which he was  
 and

was

has been attached by this Court on the application of

\_\_\_\_\_, the \_\_\_\_\_ in the  
 suit specified above. You are therefore requested to stay the  
 execution of the decree of your Court until you receive an intim-  
 ation from this Court that the present notice has been cancelled  
 or until execution of the said decree is applied for by the holder  
 of the decree now sought to be executed or by his judgment-  
 debtor.

I have the honour, etc.,

*Judge.*

Dated the

day of

19

\_\_\_\_\_  
 No. 23.

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE  
 DECREE. (O. 21, r. 53.)

*(Title.)*

To

WHEREAS an application has been made in this Court by  
 the decree-holder in the above suit for the attachment of a  
 decree obtained by you on the \_\_\_\_\_ day  
 of \_\_\_\_\_ 19 , in the Court of  
 in Suit No.

of 19 , in which

was

and

that you, the said \_\_\_\_\_ was \_\_\_\_\_ ; It is ordered  
 are hereby, prohibited and restrained, until the further order  
 of this Court, from transferring or charging the same in  
 any way.

GIVEN under my hand and the seal of the Court, this  
 day of \_\_\_\_\_ 19 .

*Judge.*

No. 24.

*(The First Schedule.—Appendix E.—Execution.)*

**No. 24.**

### ATTACHMENT IN EXECUTION.

**PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IM-MOVEABLE PROPERTY. (O. 21, r. 54.)**

(Title.)

**To** **Defendant.**

**WHEREAS** you have failed to satisfy a decree passed against  
you on the                                  day of  
                    19    , in Suit No.                                  of 19    ,

in favour of  
for Rs. ; It is

ordered that you, the said  
be, and you are hereby, prohibited and restrained, until the  
further order of this Court, from transferring or charging the  
property specified in the schedule hereunto annexed, by sale,  
gift or otherwise, and that all persons be, and that they are  
hereby, prohibited from receiving the same by purchase, gift  
or otherwise.

Given under my hand and the seal of the Court, this  
day of 19 .

**Schedule.**

**Judge.**

No. 25.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY,  
ETC., IN THE HANDS OF A THIRD PARTY. (O. 21, r. 56.)

(Title.)

**To**

WHEREAS the following property has been  
attached in execution of a decree in Suit No. of  
19, passed on the day of  
19, in favour of  
for

*(The First Schedule.—Appendix E.—Execution.)*

for Rs. ; It is ordered that  
 the property so attached, consisting of Rs.  
 in money and Rs. in currency-  
 notes, or a sufficient part thereof to satisfy the said decree, shall  
 be paid over by you, the said  
 to

GIVEN under my hand and the seal of the Court, this  
 day of 19 .

*Judge.*

---

No. 26.

## NOTICE TO ATTACHING CREDITOR. (O. 21, r. 58.)

*(Title.)*

WHEREAS has made application to  
 this Court for the removal of attachment on  
 placed at your instance in execution of the decree in Suit No.  
 of 19 , this is to give you notice to appear  
 before this Court on , the  
 day of 19 ,  
 either in person or by a pleader of the Court duly instructed  
 to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this  
 day of 19

*Judge.*

---

No. 27.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE  
FOR MONEY. (O. 21, r. 66.)

*(Title.)*

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving  
 days' previous notice, by affixing  
 the



*(The First Schedule.—Appendix E.—Execution.)*

the same in this Court-house, and after making due proclamation, the

under a warrant from this Court, dated the                      property attached  
19                      , in execution of a decree in favour of                      day of  
in Suit No.

of 19                      , or so much of the said property as shall realize the  
sum of Rs.                      , being the

of the said decree and costs still  
remaining unsatisfied.

You are further commanded to return this warrant on or  
before the                      day of  
19                      , with an endorsement certifying the  
manner in which it has been executed, or the reason why it has  
not been executed.

GIVEN under my hand and the seal of the Court, this  
day of                      19

*Judge.*

---

No. 28.

NOTICE OF THE DAY FIXED FOR SETTling A SALE PROCLAMA-  
TION. (O. 21, r. 66.)

*(Title.)*

To                      Judgment-debtor.  
WHEREAS in the above-named suit                      , the decree-  
holder, has applied for the sale of                      ;  
You are hereby informed  
that the                      day of                      19  
has been fixed for settling the terms of the proclamation of  
sale.

GIVEN under my hand and the seal of the Court, this  
day of                      19

*Judge.*

No. 29.

## No. 29.

(Title.)

## 2. The

*(The First Schedule.—Appendix E.—Execution.)*

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of moveable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immoveable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this  
day of 19

*Judge.*

*Schedule*

*(The First Schedule.—Appendix E.—Execution.)**Schedule of Property.*

Number of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Detail of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value.

No. 30.

## ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE. (O. 21, r. 66.)

*(Title.)*

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of

19 , has been fixed for the sale of the said property copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which

now in your  
possession,

**WHEREAS** \_\_\_\_\_ has become the purchaser  
at a public sale in execution of the decree, in the above suit, of  
certain

*(The First Schedule.—Appendix E.—Execution.)*

certain shares in the above Corporation, that is to say, of

standing in the name of you

; It is or-

dered that you

be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said

, the purchaser aforesaid, or from receiving any dividends thereon; and you

Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said

, the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this  
day of 19

*Judge.*

---

No. 35.

**CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO  
MORTGAGE, LEASE OR SELL PROPERTY. (O. 21, r. 83.)**

*(Title.)*

WHEREAS in execution of the decree passed in the above suit an order was made on the day of

19 for the sale of the under-mentioned property of the judgment-debtor

and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or sale within a period of from the date of this certificate; provided that all monies payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

*Description*

*(The First Schedule.—Appendix E.—Execution.)**Description of property.*

GIVEN under my hand and the seal of the Court, this  
day of 19 .

Judge.

---

No. 36.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.  
(O. 21, rr. 90, 92.)

*(Title.)*

To

WHEREAS the under-mentioned property was sold on the  
day of 19 in execu-  
tion of the decree passed in the above-named suit, and whereas  
, the decree-holder [*or judgment-debtor*], has  
applied to this Court to set aside the sale of the said property  
on the ground of a material irregularity [*or fraud*] in publish-  
ing [*or conducting*] the sale, namely, that

Take notice that if you have any cause to show why the said  
application should not be granted, you should appear with  
your proofs in this Court on the day of  
19 , when the said application will be heard and  
determined.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Description of property.*

Judge.

No. 37.



*(The First Schedule.—Appendix E.—Execution.)*

## No. 37.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.  
(O. 21, rr. 91, 92.)

*(Title.)*

To

WHEREAS \_\_\_\_\_, the purchaser  
of the under-mentioned property sold on the  
day of \_\_\_\_\_ 19\_\_\_\_, in execution of  
the decree passed in the above-named suit, has applied to this  
Court to set aside the sale of the said property on the ground that  
\_\_\_\_\_, the judgment-  
debtor, had no saleable interest therein :

Take notice that if you have any cause to show why the said  
application should not be granted, you should appear with your  
proofs in this Court on the \_\_\_\_\_ day of  
\_\_\_\_\_ 19\_\_\_\_ when the said application will be  
heard and determined.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_.

*Description of property.**Judge.*

## No. 38.

CERTIFICATE OF SALE OF LAND. (O. 21, r. 94.)

*(Title.)*

THIS is to certify that \_\_\_\_\_ has been de-  
clared the purchaser at a sale by public auction on the  
day of \_\_\_\_\_ 19\_\_\_\_, of \_\_\_\_\_  
\_\_\_\_\_ in execution of  
decree in this suit, and that the said sale has been duly confirmed  
by this Court.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19\_\_\_\_

*Judge.*

No. 39.

*(The First Schedule.—Appendix E.—Execution.)*

## No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A  
SALE IN EXECUTION. (O. 21, r. 95.)*(Title.)*

To

The Bailiff of the Court.

WHEREAS \_\_\_\_\_ has become  
the certified purchaser of \_\_\_\_\_ at a  
sale in execution of decree in suit No. \_\_\_\_\_ of 19 \_\_\_\_\_; You are  
hereby ordered to put the said \_\_\_\_\_, the  
certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_\_

*Judge.*

## No. 40.

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXE-  
CUTION OF DECREE. (O. 21, r. 97.)*(Title.)*

To

WHEREAS \_\_\_\_\_, the  
decree-holder in the above suit, has complained to this Court  
that you have resisted (*or* obstructed) the officer charged with  
the execution of the warrant for possession :

You are hereby summoned to appear in this Court on the  
day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_ A.M., to  
answer the said complaint.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_\_

*Judge.*

No. 41.

(The First Schedule.—Appendix E.—Execution.)

## No. 41.

WARRANT OF COMMITTAL. (O. 21, r. 98.)

(Title.)

To

The Officer in Charge of the Jail at

WHEREAS the undermentioned property has been decreed to \_\_\_\_\_, the plaintiff in this suit, and whereas the Court is satisfied that \_\_\_\_\_ without any just cause resisted [or obstructed] and is still resisting [or obstructing] the said \_\_\_\_\_ in obtaining possession of the property, and whereas the said \_\_\_\_\_ has made application to this Court that the said \_\_\_\_\_ be committed to the civil prison ;

You are hereby commanded and required to take and receive the said \_\_\_\_\_ into the civil prison and to keep him imprisoned therein for the period of \_\_\_\_\_ days.

GIVEN under my hand and the seal of the Court, this day of \_\_\_\_\_ 19\_\_\_\_

Judge.

## No. 42.

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND.  
(Section 72.)

(Title.)

To

, Collector of

SIR,

In answer to your communication No. \_\_\_\_\_, dated \_\_\_\_\_, representing that the sale in execution of the decree in this suit of \_\_\_\_\_ land situate within your district is objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

SIR,

Your obedient Servant,

Judge.

APPENDIX F.

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

## APPENDIX F.

### SUPPLEMENTAL PROCEEDINGS.

#### No. 1.

WARRANT OF ARREST BEFORE JUDGMENT. (O. 38, r. 1.)

(Title.)

To

The Bailiff of the Court.

WHEREAS  
suit, claims the sum of Rs.

Principal . . .			
Interest . . .			
Costs . . .			
<b>TOTAL .</b>			

, the plaintiff in the above  
as noted in the margin,  
and has proved to the satisfac-  
tion of the Court that there is  
probable cause for believing  
that the defendant .

is about to ;  
These are to command yo to  
demand and receive from the  
said the  
sum of Rs. as sufficient

to satisfy the plaintiff's claim, and unless the said sum of  
Rs. is forthwith delivered to you by or on behalf of  
the said , to take the said into custody,  
and to bring him before this Court, in order that he may show  
cause why he should not furnish security to the amount of Rs.  
for his personal appearance before the Court, until  
such time as the said suit shall be fully and finally disposed of,  
and until satisfaction of any decree that may be passed against  
him in the suit.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

Judge.

No. 2.

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

## No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT. (O. 38, r. 2.)

(Title.)

WHEREAS at the instance of \_\_\_\_\_, the plaintiff in the above suit, \_\_\_\_\_ the defendant, has been arrested and brought before the Court;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security :

Therefore I \_\_\_\_\_ have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit ; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

(Signed)

Witnesses.

1. \_\_\_\_\_
2. \_\_\_\_\_

## No. 3.

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE. (O. 38, r. 3.)

(Title.)

To

WHEREAS \_\_\_\_\_, who became surety on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ for your appearance in the above suit, has applied to this Court to be discharged from his obligation :

You

*(The First Schedule.—Appendix F.—Supplemental Proceedings.)*

You are hereby summoned to appear in this Court in person on the                    day of                    19                    , at                    A.M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this                    day of                    19                   

*Judge.*

---

No. 4.

ORDER FOR COMMITTAL. (O. 38, r. 4.)

*(Title.)*

To

WHEREAS                    , plaintiff in this suit, has made application to the Court that security be taken for the appearance of                    , the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant                    be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court, this day of                    19                   

*Judge.*

---

No. 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE. (O. 38, r. 5.)

*(Title.)*

To

The Bailiff of the Court.

WHEREAS                    has proved to the satisfaction of the Court that the defendant in the above suit

(*The First Schedule.—Appendix F.—Supplemental Proceedings.*)

These are to command you to call upon the said defendant on or before the            day of            19    either to furnish security for the sum of rupees            to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him ; or to appear and show cause why he should not furnish security ; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court ; and you are further commanded to return this warrant on or before the            day of 19    , with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of            19    .

*Judge.*

---

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY. (O. 38, r. 5.)

(*Title.*)

WHEREAS at the instance of            , the plaintiff in the above suit,            the defendant has been directed by the Court to furnish security in the sum of Rs.            to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed ;

Therefore I            have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree ; and in default of his so doing I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs.            or such sum not exceeding the said sum as the said Court may adjudge.

*Schedule.*

(*The First Schedule.—Appendix F.—Supplemental Proceedings.*)

*Schedule.*

Witness my hand at                      this                      day of  
19 .

(Signed)

Witnesses.

- 1.
- 2.

---

No. 7.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO  
FURNISH SECURITY. (O. 38, r. 6.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS                      , the plaintiff in this suit, has applied to the Court to call upon                      , the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said                      to furnish such security, which he has failed to do; These are to command you to attach                      , the property of the said                      , and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the                      day of 19                      with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this  
day of                      19 .

*Judge.*

---

No. 8.

TEMPORARY INJUNCTIONS. (O. 39, r. 1.)

(*Title.*)

Upon motion made unto this Court by                      , Pleader of [or Counsel for] the plaintiff A. B., and upon reading the  
petition



(The First Schedule.—Appendix F.—Supplemental Proceedings.)

petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the                      day of                      , or the written statement of the said plaintiff filed on the                      day of

] and upon hearing the evidence of                      and                      in support thereof [*if after notice and defendant not*

*appearing : add,* and also the evidence of

as to service of notice of this motion upon the defendant C. D.] : This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned*], being No. 9, Oilmongers Street, Hindupur, in the Taluk of                      , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this                      day of                      19

*Judge.*

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus :—*]

to restrain the defendants                      and                      from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or bill of exchange*] in question, dated on or about the                      , etc., mentioned in the plaintiff's plaint [*or petition*] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[*In Copyright cases*]                      to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called                      or any part thereof, until the, etc.

[*Where part only of a book is to be restrained*]

to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [*or petition and evidence,*  
etc.]

*(The First Schedule.—Appendix F.—Supplemental Proceedings.)*

etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled

and also that part which is entitled  
[or which is contained in page to page  
both inclusive] until , etc.

*[In Patent cases]* to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks *[or as the case may be]* upon the principle of the inventions in the plaintiff's plaint *[or petition, etc., or written statement, etc.,]* mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint *[or as the case may be]* mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

*[In cases of Trade marks]* to restrain the defendant C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking *[or as the case may be]* described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint *[or petition, etc.,]* mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.

*[To restrain a partner from in any way interfering in the business]*

to restrain the defendant C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

---

No. 6.

APPOINTMENT OF A RECEIVER. (O. 40, r. 1.)

(Title.)

To

WHEREAS                      has been attached in execution of a decree passed in the above suit on the                      day of 19                      , in favour of                      ; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on                      . You will be entitled to remuneration at the rate of                      per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of                      19                      .

*Judge.*

---

No. 7.

BOND TO BE GIVEN BY RECEIVER. (O. 40, r. 3.)

(Title.)

KNOW all men by these presents, that we,                      and                      and                      , are jointly and severally bound to                      of the Court of                      in Rs.                      to be paid to the said                      or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole,

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this                      day of                      19   .

Whereas a plaint has been filed in this Court by  
against                      for the purpose of [*here insert the object of suit*]:

And whereas the said                      has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of                      in the said plaint named:

Now the condition of this obligation is such, that if the above-bounden                      shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property, of the said                      at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of

*Note.*—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

(The First Schedule.—Appendix G.—Appeal, Reference and Review.)

## APPENDIX G.

### APPEAL, REFERENCE AND REVIEW.

#### No. 1.

MEMORANDUM OF APPEAL. (O. 41, r. 1.)

(Title.)

The

above-named appeals to the  
Court at from the decree of  
in Suit No. of 19, dated the  
day of 19, and sets forth the following  
grounds of objection to the decree appealed from, namely :—

#### No. 2.

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY  
EXECUTION OF DECREE. (O. 41, r. 5.)

(Title.)

To

THIS security bond on stay of execution of decree executed  
by witnesseth :—

That, the plaintiff in Suit No. of 19, having sued, the defendant, in this Court and a decree having been passed on the day of 19 in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. , mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount

(The First Schedule.—Appendix G.—Appeal, Reference and Review.)

so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this                      day of  
19 .

*Schedule.*

Witnessed by

(Signed)

1.

2.

No. 3.

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF  
APPEAL. (O. 41, r. 6.)

(Title.)

To

THIS security bond on stay of execution of decree executed by                      witnesseth :—

That                      , the plaintiff in Suit No.                      of 19                      , having sued                      , the defendant, in this Court and a decree having been passed on the                      day of                      19                      in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the                      Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs.                      mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to

pay

(The First Schedule.—Appendix G.—Appeal, Reference and Review.)

pay the balance. To this effect I execute this security bond this  
day of 19 .

*Schedule.*

Witnessed by

(Signed)

1.

2.

---

No. 4.

SECURITY FOR COSTS OF APPEAL. (O. 41, r. 10.;  
(Title.)

To

THIS security bond for costs of appeal executed by  
witnesseth :—

This appellant has preferred an appeal from the decree in  
Suit No. of 19 , against the respondent, and has  
been called upon to furnish security. Accordingly I, of  
my own free will, stand security for the costs of the appeal,  
mortgaging the properties specified in the schedule hereunto  
annexed. I shall not transfer the said properties or any part  
thereof, and in the event of any default on the part of the  
appellant, I shall duly carry out any order that may be made  
against me with regard to payment of the costs of appeal.  
Any amount so payable shall be realized from the properties  
hereby mortgaged, and if the proceeds of the sale of the said  
properties are insufficient to pay the amount due I and my legal  
representatives will be personally liable to pay the balance.  
To this effect I execute this security bond this  
day of 19 .

*Schedule.*

Witnessed by

(Signed)

1

2

---

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL.  
(O. 41, r. 13.)

(Title.)

To

You are hereby directed to take notice that

the

(*The First Schedule.—Appendix G.—Appeal, Reference and Review.*)

the                    in the above suit, has preferred an appeal to this Court from the decree passed by you therein on the

day of                    19 .

You are requested to send with all practicable despatch all material papers in the suit.

Dated the                    day of                    19 .

*Judge.*

---

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING  
OF THE APPEAL. (O. 41, r. 14.)

(*Title.*)

APPEAL from the                    of the Court of  
dated the                    day of                    19

To

*Respondent.*

TAKE notice that an appeal from the decree of  
in this case has been presented by                    and registered  
in this Court, and that the                    day of  
19                    has been fixed by this Court for the hearing of this  
appeal.

If no appearance is made on your behalf by yourself,  
your pleader, or by some one by law authorized to act for  
you in this appeal, it will be heard and decided in your  
absence.

GIVEN under my hand and the seal of the Court, this  
day of                    19 .

*Judge.*

[*Note.*—If a stay of execution has been ordered, intimation  
should be given of the fact on this notice.]

---

No. 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE  
APPEAL BUT JOINED BY THE COURT AS A RESPONDENT.

(O. 41, r. 20.)

(*Title.*)

To

WHEREAS you were a party in suit No.

of



(*The First Schedule.—Appendix G.—Appeal, Reference and Review.*)

19 , in the Court of , and whereas the  
has preferred an appeal to this Court from the decree  
passed against him in the said suit and it appears to this Court  
that you are interested in the result of the said appeal :

This is to give you notice that this Court has directed you to  
be made a respondent in the said appeal and has adjourned  
the hearing thereof till the day of

19 , at A.M. If no appearance is made on  
your behalf on the said day and at the said hour the appeal  
will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Judge.*

---

No. 8.

MEMORANDUM OF CROSS OBJECTION. (O. 41, r. 22.)

(*Title.*)

WHEREAS the has preferred an appeal to  
the Court at from  
the decree of in Suit No. of 19 ,  
dated the day of 19 , and where-  
as notice of the day fixed for hearing the appeal was served on  
the on the day of 19 ,  
the files this memorandum of cross objection  
under rule 22 of Order XLI of the Code of Civil Procedure, 1908,  
and sets forth the following grounds of objection to the decree  
appealed from, namely :—

---

No. 9.

DECREE IN APPEAL. (O. 41, r. 35.)

(*Title.*)

Appeal No. of 19 from the decree of the  
Court of dated the day of  
19 .

Memorandum of Appeal.

*Plaintiff.*

*Defendant.*

The

(*The First Schedule.—Appendix G.—Appeal, Reference and Review.*)

The above-named appeals to the Court at from the decree of in the above suit, dated the day of 19 , for the following reasons, namely :—

This appeal coming on for hearing on the day of 19 , before , in the presence of for the appellant and of for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs. , are to be paid by . The costs of the original suit are to be paid by .

GIVEN under my hand this day of 19

*Judge.*

*Costs of Appeal.*

Appellant.	Amount.			Respondent.	Amount.		
	Rs.	a.	p.		Rs.	a.	p.
1. Stamp for memorandum of appeal.				Stamp for power .			
2. Do. for power .				Do. for petition .			
3. Service of processes				Service of processes			
4. Pleader's fee on Rs.				Pleader's fee on Rs.			
Total .				Total .			

No. 10.

APPLICATION TO APPEAL IN FORMÂ PAUPERIS. (O. 44, r. 1.)

(*Title.*)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable

(The First Schedule.—Appendix G.—Appeal, Reference and Review.)

immoveable property belonging to me with the estimated value thereof.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(Signed)

*Note.*—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

---

No. 11.

NOTICE OF APPEAL IN FORMÂ PAUPERIS. (O. 44, r. 1.)

(Title.)

WHEREAS the above-named \_\_\_\_\_ has applied to be allowed to appeal as a pauper from the decree in the above suit dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 and whereas the \_\_\_\_\_ day of \_\_\_\_\_ 19 has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 .

*Judge.*

---

No. 12.

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE KING IN COUNCIL SHOULD NOT BE GRANTED. (O. 45, r. 3.)

(Title.)

To

TAKE notice that \_\_\_\_\_ has applied to this Court for a certificate that as regards amount or value and nature the above case fulfils the requirements of section 110 of the Code of Civil Procedure, 1908, or that it is otherwise a fit one for appeal to His Majesty in Council.

The \_\_\_\_\_ day of \_\_\_\_\_ 19 is fixed for you to show cause why the Court should not grant the certificate asked for.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 .

*Registrar.*

No. 13.

(*The First Schedule.—Appendix G.—Appeal, Reference and Review.*)

## No. 13.

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE KING  
IN COUNCIL. (O. 45, r. 8.)

(*Title.*)

To

WHEREAS \_\_\_\_\_, the  
\_\_\_\_\_ in the above case, has furnished the security and  
made the deposit required by Order XLV, rule 7, of the Code of  
Civil Procedure, 1908 :

Take notice that the appeal of the said \_\_\_\_\_ to His  
Majesty in Council has been admitted on the \_\_\_\_\_ day of  
19 \_\_\_\_\_.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Registrar.*

## No. 14.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANT-  
ED. (O. 47, r. 4.)

(*Title.*)

To

TAKE notice that \_\_\_\_\_ has applied to this Court  
for a review of its decree passed on the \_\_\_\_\_ day of  
19 \_\_\_\_\_ in the above case. The \_\_\_\_\_ day of  
19 \_\_\_\_\_ is fixed for you to show cause why the Court should not  
grant a review of its decree in this case.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*

(*The First Schedule.—Appendix II.—Miscellaneous.*)

## APPENDIX H.

### MISCELLANEOUS.

#### No. 1.

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED. (O. 14, r. 6.)  
(*Title.*)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [*or of law*] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ and filed as Exhibit \_\_\_\_\_ in the said suit, is or is not beyond the statute of limitation (*or state the point at issue whatever it may be*) :

We therefore severally bind ourselves that, upon the finding of the Court in the negative [*or affirmative*] of such issue, \_\_\_\_\_ will pay to the said \_\_\_\_\_ the sum of Rupees \_\_\_\_\_ (*or such sum as the Court shall hold to be due thereon*), and I, the said \_\_\_\_\_, will accept the said sum of Rupees \_\_\_\_\_ (*or such sum as the Court shall hold to be due*) in full satisfaction of my claim on the bond aforesaid [*or that upon such finding I, the said \_\_\_\_\_, will do or abstain from doing, etc., etc.*].

*Plaintiff.*

*Defendant.*

Witnesses.—

1.

2.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

#### No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO  
ANOTHER COURT FOR TRIAL. (SECTION 24.)

In the Court of the District Judge of

No. \_\_\_\_\_ of 19\_\_\_\_

To

WHEREAS an application, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ has been made to this Court by \_\_\_\_\_ the \_\_\_\_\_ in Suit No. \_\_\_\_\_ of 19\_\_\_\_ now pending

No 5.

(The First Schedule.—Appendix H.—Miscellaneous.)

## No. 5.

LIST OF DOCUMENTS PRODUCED BY <sup>PLAINTIFF</sup>  
DEFENDANT (O. 13, r. 1.)  
(Title.)

No.	Description of document.	Date, if any, which the docu- ment bears.	Signature of party or pleader.
1	2	3	4

## No. 6.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF  
A WITNESS ABOUT TO LEAVE THE JURISDICTION. (O. 18, r. 16.)

(Title.)

To

*plaintiff (or defendant).*

WHEREAS in the above suit application has been made to  
the Court by that the examination of  
, a witness required by the said , in  
the said suit may be taken immediately; and it has been shown  
to the Court's satisfaction that the said witness is about to leave  
the Court's jurisdiction (or any other good and sufficient cause  
to be stated):

TAKE notice that the examination of the said witness  
will be taken by the Court on the day  
of 19 .

Dated the day of 19

*Judge.*

No. 7.

(The First Schedule.—Appendix H.—Miscellaneous.)

### No. 7.

COMMISSION TO EXAMINE ABSENT WITNESS. (O. 26, rr. 4, 18.)

(Title.)

To

WHEREAS the evidence of \_\_\_\_\_ is required by the \_\_\_\_\_ in the above suit; and whereas \_\_\_\_\_; you are requested to take the evidence on interrogatories [*or viva voce*] of such witness \_\_\_\_\_, and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs. \_\_\_\_\_, being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*

### No. 8.

LETTER OF REQUEST. (O. 26, r. 5.)

(Title.)

(Heading :—To the President and Judges of, etc., etc., *or as the case may be.*)

WHEREAS a suit is now pending in the \_\_\_\_\_ in which *A. B.* is plaintiff and *C. D.* is defendant; And in the said suit the plaintiff claims \_\_\_\_\_

(*Abstract of claim.*)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say :

*E. F.*, of \_\_\_\_\_  
*G. H.*, of \_\_\_\_\_  
*I. J.*, of \_\_\_\_\_

and

And



(The First Schedule.—Appendix H.—Miscellaneous.)

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I \_\_\_\_\_, as the \_\_\_\_\_ of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said \_\_\_\_\_, or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (*or vivâ voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(Note.—If the request is directed to a Foreign Court, the words “through His Majesty’s Secretary of State for Foreign Affairs for transmission” should be inserted after the words “other witnesses” in the last line of this form.)

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No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE  
ACCOUNTS. (O. 26, rr. 9, 11.)

(Title.)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for

should be issued; You are hereby appointed Commissioner for the purpose of

Process

(*The First Schedule.—Appendix H.—Miscellaneous.*)

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. \_\_\_\_\_, being your fee in the above is herewith forwarded.

GIVEN under my hand and the seal of the Court, this  
day of \_\_\_\_\_ 19 \_\_\_\_.

*Judge.*

No. 10.

COMMISSION TO MAKE A PARTITION. (O. 26, r. 13.)

(*Title.*)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the

day of \_\_\_\_\_ 19 \_\_\_\_; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. \_\_\_\_\_, being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_

*Judge.*

No. 11.

(The First Schedule.—Appendix H.—Miscellaneous.)

No. 11.

NOTICE TO MINOR DEFENDANT AND GUARDIAN. (O. 32, r. 3.)

(Title.)

To

*Minor Defendant.*

*Natural Guardian.*

(1) Here  
insert the  
name of  
guardian.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you (1), are hereby required to take notice that unless within \_\_\_\_\_ days from the service upon you of this notice, an application is made to this Court for the appointment of you (1) \_\_\_\_\_ or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

GIVEN under my hand and the seal of the Court, this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_.

*Judge.*

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No. 12.

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM. (O. 33, r. 6.)

(Title.)

To

WHEREAS \_\_\_\_\_ has applied to this Court for permission to institute a suit against \_\_\_\_\_ *in forma pauperis* under Order XXXIII of the Code of Civil Procedure, 1908; and whereas the Court sees no reason to reject the application; and whereas the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof:

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the  
pauperism

(*The First Schedule.—Appendix H.—Miscellaneous.*)

pauperism of the applicant, you may do so on appearing in this Court on the said                      day of                      19                      .

GIVEN under my hand and the seal of the Court, this day of                      19                      .

*Judge.*

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No. 13.

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE. (Section 145.)

(*Title.*)

To

WHEREAS you                      did on                      become liable as surety for the performance of any decree which might be passed against the said                      defendant in the above suit; and whereas a decree was passed on the                      day of                      19                      against the said defendant for the payment of                      , and whereas application has been made for execution of the said decree against you;

Take notice that you are hereby required on or before the                      day of                      19                      to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court, this day of                      19                      .

*Judge.*

(The First Schedule.—Appendix H.—Miscellaneous.)

No. 14.

REGISTER OF CIVIL SUITS. (O. 4, r. 2.)

Court of the \_\_\_\_\_ at \_\_\_\_\_  
 REGISTER OF CIVIL SUITS in the year 19 .

PLAINTIFF.		DEPENDANT.		CLAIM.		APPEARANCE.			JUDGMENT.			APPEAL.		EXECUTION.				RETURN OF EXECUTION.						
Name.	Description.	Place of residence.	Name.	Description.	Place of residence.	Particulars.	Amount or Value.	When the cause of action accrued.	Day for parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or amount.	Date of decision of appeal.	Judgment in appeal.	Date of application.	Date of order.	Against whom.	For what and amount of money.	Amount of costs.	Amount paid into Court.	Arrested.	Minute of other Return than Payment or Arrest, and date of every Return.

NOTE.—Where there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

No. 15.



*(The Second Schedule.—Arbitration.)***THE SECOND SCHEDULE.****ARBITRATION.***Arbitration in Suits.*

Parties to  
suit may ap-  
ply for order  
of reference.

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

Appointment  
of arbitrator.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Order of re-  
ference.

3. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

Where refer-  
ence is to two  
or more, or  
order to provide  
for difference  
of opinion.

4. (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

(a) by the appointment of an umpire; or

(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or

(c) by empowering the arbitrators to appoint an umpire; or

(d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

Power of  
Court to ap-  
point arbitra-  
tor in certain  
cases.

5. (1) In any of the following cases, namely :—

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses

*(The Second Schedule.—Arbitration.)*

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves British India in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

Powers of arbitrator or umpire appointed under paragraph 4 or 5. Summoning witnesses and default.

7. (1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Extension of time for making award.

9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—

Where umpire may arbitrate in lieu of arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) if



*(The Second Schedule.—Arbitration.)*

- (b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

Award to be signed and filed.

10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties

Statement of special case by arbitrators or umpire.

11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to modify or correct award.

12. The Court may, by order, modify or correct an award,—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Order as to costs of arbitration.

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award or matter referred to arbitration may be remitted.

14. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit,—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;
- (b) where the award is so indefinite as to be incapable of execution;
- (c) where an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award.

15. (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award

*(The Second Schedule.—Arbitration.)*

award shall be set aside except on one of the following grounds, namely :—

- (a) corruption or misconduct of the arbitrator or umpire ;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

16. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award. Judgment to be according to award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

*Order of reference on agreements to refer.*

17. (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court. Application to file in Court agreement to arbitration.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within

*(The Second Schedule.—Arbitration.)*

within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

Stay of suit where there is an agreement to refer to arbitration.

18. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

Provisions applicable to proceedings under paragraph 17.

19. The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon.

*Arbitration without the intervention of a Court.*

Filing award in matter referred to arbitration without intervention of Court.

20. (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Filing and enforcement of such award.

21. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph

*(The Second Schedule.—Arbitration.)*

graph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

I of 1877.

22. The last thirty-seven words of section 21 of the Specific Relief Act, 1877, shall not apply to any agreement to refer to arbitration, or to any award, to which the provisions of this schedule apply. Exclusion of certain words in the Specific Relief Act, 1877.

23. The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned. Forms.

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## APPENDIX.

### No. 1.

#### APPLICATION FOR AN ORDER OF REFERENCE.

*(Title of suit.)*

1. This suit is instituted for *(state nature of claim)*.
2. The matter in difference between the parties is *(state matter of difference)*.
3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.
4. The applicants therefore apply for an order of reference.

A. B.

C. D.

Dated the      day of                      19 .

NOTE.—If the parties are agreed as to the arbitrators, it should be so stated.

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### No. 2.

#### ORDER OF REFERENCE.

*(Title of suit.)*

UPON reading the application presented on the

day

*(The Second Schedule.—Arbitration.)*

day of 19 it is ordered that the following matter in difference arising in this suit, namely :—

---

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire ; and such arbitrators are to make their award in writing on or before the day of 19 , and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

GIVEN under my hand and the seal of the Court, this day of 19

*Judge*

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No. 3.

ORDER FOR APPOINTMENT OF NEW ARBITRATOR.

*(Title of suit.)*

WHEREAS by an order, dated the day of 19 [state order of reference and death, refusal, etc., of arbitrator], it is by consent ordered that Z be appointed in the place of X (deceased, or as the case may be) to act as arbitrator with Y, the surviving arbitrator, under the said order ; and it is ordered that the award of the said arbitrators be made on or before the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19 .

*Judge.*

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No. 4.

SPECIAL CASE.

*(Title of suit.)*

In the matter of an arbitration between A. B. of

*(The Second Schedule.—Arbitration.)*

and *C. D.* of \_\_\_\_\_, the following special case is stated for the opinion of the Court:—

[*Here state the facts concisely in numbered paragraphs.*]

The questions of law for the opinion of the Court are:—

First, whether \_\_\_\_\_

Secondly, whether \_\_\_\_\_

X.  
Y.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

No. 5.

AWARD.

*(Title of suit.)*

In the matter of an arbitration between *A. B.* of \_\_\_\_\_ and *C. D.* of \_\_\_\_\_ :—

WHEREAS in pursuance of an order of reference made by the Court of \_\_\_\_\_ and dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ the following matter in difference between *A. B.* and *C. D.*, namely, \_\_\_\_\_

has been referred to us for determination ;

Now we, having duly considered the matter referred to us, do hereby make our award as follows :—

We award—

(1) that \_\_\_\_\_

(2) that \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .

X.  
Y.

(*The Third Schedule.—Execution of Decrees by Collectors.*)

## THE THIRD SCHEDULE.

### EXECUTION OF DECREES BY COLLECTORS.

Powers of  
Collector.

1. Where the execution of a decree has been transferred to the Collector under section 68, he may—

- (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

Procedure of  
Collector in  
special cases.

2. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be  
given to de-  
cree-holders  
and to per-  
sons having  
claims on  
property.

3. (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

*(The Third Schedule.—Execution of Decrees by Collectors.)*

(2) Such notice shall be published by being affixed on a conspicuous part of the court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

Amount of decrees for payment of money to be ascertained, and immoveable property available for their satisfaction.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

Where District Court may issue notices and hold inquiry.

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

Effect of decision of Court as to dispute.

7. (1) Where



*(The Third Schedule.—Execution of Decrees by Collectors.)*

Scheme for  
liquidation of  
decrees for  
payment of  
money.

7. (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property ; or,

(b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—

(i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or

(ii) by mortgaging the whole or any part of such property ; or

(iii) by selling part of such property ; or

(iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or

(v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two

arbitrators

*(The Third Schedule.—Execution of Decrees by Collectors.)*

arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Local Government.

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

9. (1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

(a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

(b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or

(c) where the Collector has proceeded under paragraph 2,—

(i) in keeping down the interest on incumbrances on the property;

(ii) where

*(The Third Schedule.—Execution of Decrees by Collectors.)*

- (ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
- (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

Sales how  
to be con-  
ducted.

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;
- (c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

Restrictions  
as to aliena-  
tion by judg-  
ment-debtor  
or his repre-  
sentative,  
and prosecu-  
tion of reme-  
dies by decree-  
holders.

11. (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution, either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any  
remedy

*(The Third Schedule.—Execution of Decrees by Collectors.)*

remedy of which the decree-holder has been temporarily deprived.

12. Where the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

Provision where property is in several districts.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

Powers of Collector to compel attendance and production.

(The Fourth Schedule.—Enactments amended.)

## THE FOURTH SCHEDULE.

(See section 155.)

### ENACTMENTS AMENDED.

1	2	3	4
Year.	No.	Short title.	Amendment.
1870	VII	The Court-fees Act, 1870 .	<p>In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set-off or counter-claim " and after the word "Act" the words "or of cross-objection" shall be inserted.</p> <p>From article 11 of Schedule II the words "from an order rejecting a plaint or " shall be omitted.</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely :</p> <p>"Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908."</p>

## THE FIFTH SCHEDULE.

(The Fifth Schedule.—Enactments repealed.)

## THE FIFTH SCHEDULE.

(See section 156.)

### ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
<i>Acts of the Governor General in Council.</i>			
1870	VII	The Court-fees Act, 1870 .	Section 16, and article 15 of Schedule II.
1882	IV	The Transfer of Property Act, 1882.	Sections 85 to 90 inclusive, 92 to 94 inclusive, 96, 97, 99 and in section 100 the words "and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property."
"	XIV	The Code of Civil Procedure.	The whole Act.
"	XV	The Presidency Small Cause Courts Act, 1882.	The last paragraph of section 3.
1888	VI	The Debtors Act, 1888 .	Sections 2 to 8.
"	VII	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed, except section 1, section 65 and section 66, sub-sections (1), (3) and (4).
"	X	The Presidency Small Cause Courts Law Amendment Act, 1888.	So much as is unrepealed.
1890	VIII	The Guardian and Wards Act, 1890.	Section 53.
1891	XII	The Repealing and Amending Act, 1891.	So much as relates to Act XIV of 1882 and Act VII of 1888.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and preamble the words "and the Code of Civil Procedure" and sections 2, 3 and 4.
1894	V	The Civil Procedure Code Amendment Act, 1894.	The whole Act.
1895	VII	The Punjab Laws Act Amendment Act, 1895.	Sections 1 and 2.
"	XIII	The Civil Procedure Code Amendment Act, 1895.	The whole Act.
1900	VI	The Lower Burma Courts Act, 1900.	So much of the schedules as relate to Act XIV of 1882.

## ACT No. VI OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 8th June, 1908.)*

An Act further to amend the law relating to explosive substances.

**WHEREAS** it is necessary further to amend the law relating to explosive substances; It is hereby enacted as follows:—

Short title,  
extent and  
application.

1. (1) This Act may be called the Explosive Substances Act, 1908.

(2) It extends to the whole of British India and applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India;

(b) all other British subjects within the territories of any native prince or chief in India.

Definition of  
“explosive  
substance”.

2. In this Act the expression “explosive substance” shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

Punishment  
for causing  
explosion  
likely to  
endanger life  
or property.

3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished

punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

4. Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other person by means thereof to endanger life or cause serious injury to property in British India;

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

Punishment for making or possessing explosives under suspicious circumstances.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of

Punishment of abettors.

materials,



materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Restriction  
on trial of  
offences. ,

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Local Government or the Governor General in Council.

## ACT No. VII OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 8th June 1908.)*

An Act for the prevention of incitements to murder and to other offences in newspapers.

**W**HEREAS it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; It is hereby enacted as follows :—

1. (1) This Act may be called the Newspapers (Incitements to Offences) Act, 1908. Short title and extent.

(2) It extends to the whole of British India.

2. (1) In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) "Magistrate" means a District Magistrate or Chief Presidency Magistrate :

(b) "newspaper" means any periodical work containing public news or comments on public news :

(c) "printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

(2) Save as herein otherwise provided all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the Code of Criminal Procedure, 1898.

V of 1898.

3. (1) In cases where, upon application made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within the Province contains any incitement to murder or to any offence under the

Power to forfeit printing presses in certain cases

Explosive

Explosive Substances Act, 1908, or to any act of violence, such Magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute. VI of 1908.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under section 5 of the Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned. XXV of 1867.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex parte* for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal Procedure, 1908.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any.

4. (1) The Magistrate may by warrant empower any Police-officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

Power to seize.

- (a) where the newspaper specified in such warrant is printed or published, or
- (b) where any such property may be or may be reasonably suspected to be, or
- (c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search-warrants by the Code of Criminal Procedure, 1898.

V of 1898.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute.

Appeal.

6. Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any Court.

Bar of other proceedings.

7. Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette, annul any declaration made by the printer or publisher of such newspaper under the Press and Registration of Books Act, 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper which is the same in substance as the said newspaper, until such prohibition be withdrawn.

Power to annul declaration under Press and Registration of Books Act, 1867.

XXV of 1867.

8. Any person who prints or publishes any newspaper specified in any prohibition notified under section 7

Penalty.

section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the Press and Registration of Books Act, 1867.

XXV of  
1867.

Application  
of Code of  
Criminal  
Procedure.

9. All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the Code of Criminal Procedure, 1898.

V of 1898.

Operation  
of other  
laws not  
barred.

10. No proceedings taken under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law.

## ACT NO. VIII OF 1908.

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 10th July,  
1908.)*

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### An Act to amend the Local Authorities Loan Act, 1904.

III of 1904. WHEREAS it is expedient to amend the Local Authorities Loan Act, 1904; It is hereby enacted as follows:—

1. This Act may be called the Local Authorities Loan (Amendment) Act, 1908. Short title.

2. In section 2 of the Local Authorities Loan Act, 1904, for the words "bills repayable" the words "bills or promissory notes payable" shall be substituted; and in the proviso to the same section, after the word "bills" the words "or promissory notes" shall be inserted. Amendment  
of section 2,  
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# THE INDIAN LIMITATION ACT, 1908 (IX OF 1908).

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## ACT No. IX OF 1908.

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 7th August, 1908.)*

An Act to consolidate and amend the law for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows :—

### PART I.

#### PRELIMINARY.

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Indian Limitation Act, 1908.

(2) It extends to the whole of British India; and

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “applicant” includes any person from or through whom an applicant derives his right to apply :

(2) “bill of exchange” includes a hundi and a cheque :

(3) “bond” includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified

(Part I.—Preliminary. Part II.—Limitation of Suits, Appeals and Applications.)

specified act is performed, or is not performed, as the case may be :

(4) “defendant” includes any person from or through whom a defendant derives his liability to be sued :

(5) “easement” includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another :

(6) “foreign country” means any country other than British India :

(7) “good faith” : nothing shall be deemed to be done in good faith which is not done with due care and attention :

(8) “plaintiff” includes any person from or through whom a plaintiff derives his right to sue :

(9) “promissory note” means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

(10) “suit” does not include an appeal or an application : and

(11) “trustee” does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

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## PART II.

### LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Dismissal of suits, etc., instituted, etc., after period of limitation.

*Explanation.*

(Part II.—*Limitation of Suits, Appeals and Applications.*)

*Explanation.*—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Where Court  
is closed  
when period  
expires.

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Extension of  
period in  
certain cases.

5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

*Explanation.*—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Legal  
disability.

6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has

(Part II.—*Limitation of Suits, Appeals and Applications.*)

has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

*Illustrations.*

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Disability  
of one of  
several  
plaintiffs or  
applicants.

*Illustrations.*

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge  
of

(Part II.—Limitation of Suits, Appeals and Applications.)

of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

pecial  
exceptions.

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

*Illustrations.*

(a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Continuous  
running of  
time.

9. Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding

(Part II.—*Limitation of Suits, Appeals and Applications.* Part III.—*Computation of Period of Limitation.*)

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Suits against express trustees and their representatives.

11. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

Suits on foreign contracts.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

### PART III.

#### COMPUTATION OF PERIOD OF LIMITATION.

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion of time in legal proceedings.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In

(Part III.—*Computation of Period of Limitation.*)

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India and certain other territories.  
Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded.

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

*Explanation I.*—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

*Explanation II.*—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

*Explanation III.*—For the purposes of this section misjoinder of parties or of causes of action shall be deemed

*(Part III.—Computation of Period of Limitation.)*

deemed to be a cause of a like nature with defect of jurisdiction.

15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which proceedings are suspended.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

Exclusion of time during which proceedings to set aside execution-sale are pending. Effect of death before right to sue accrues.

17. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been

Effect of fraud.



*(Part III.—Computation of Period of Limitation.)*

been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing.

19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872, oral I of 1872. evidence of its contents shall not be received.

*Explanation I.*—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

*Explanation II.*—

*(Part III.—Computation of Period of Limitation.)*

*Explanation II.*—For the purposes of this section, “signed” means signed either personally or by an agent duly authorized in this behalf.

*Explanation III.*—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

20. (1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Effect of payment of interest as such or of part payment of principal.

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Effect of receipt of produce of mortgaged land.

*Explanation.*—Debt includes money payable under a decree or order of Court.

21. (1) The expression “agent duly authorized in this behalf,” in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

Agent of person under disability.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

Acknowledgment or payment by one of several joint contractors, etc.

22. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the

Effect of substituting or adding

*(Part III.—Computation of Period of Limitation.)*

new plaintiff or defendant. the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Continuing breaches and wrongs.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Suit for compensation for act not actionable without special damage.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

*Illustration.*

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

*Illustrations.*

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

## PART IV.

## ACQUISITION OF OWNERSHIP BY POSSESSION.

26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

Acquisition  
of right to  
easements.

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to Government, that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

*Explanation.*—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

*Illustrations.*

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably  
and

(Part IV.—Acquisition of Ownership by Possession.  
Part V.—Savings and Repeals.)

and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1890 to 1st January 1910. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in  
favour of  
reversioner  
of servient  
tenement.

27. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

*Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of those years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguish-  
ment of  
right to pro-  
perty.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V.

SAVINGS AND REPEALS.

Savings.

29. (1) Nothing in this Act shall—

(a) affect the Indian Contract Act, 1872, section IX of 1872.  
25 :

(b) affect

*(Part V.—Savings and Repeals.)*

(b) affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India.

IV of 1869. (2) Nothing in this Act shall apply to suits under the Indian Divorce Act.

V of 1882. (3) Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may for the time being extend.

IV of 1877. 30. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877, may be instituted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877, whichever period expires first.

IV of 1877. 31. (1) Notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877, in the territories mentioned in the second schedule a suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable.

(2) Where in the aforesaid territories the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1907 and before the passing of this Act, either in a Court of first instance or of appeal on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which

Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877.

Provision for suits by certain mortgagees in territories mentioned in the second schedule.

*(Part V.—Savings and Repeals.)*

which the claim was dismissed or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act : and on such restoration, the provisions of sub-section (1) shall apply.

Repeals. **32.** The enactments mentioned in the third schedule are repealed to the extent specified in the fourth column thereof.

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*(The First Schedule.—First Division : Suits.)*

## THE FIRST SCHEDULE.

*(See section 3.)*

## FIRST DIVISION: SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863. XXIII of 1863.	<i>Part I.—Thirty days.</i> Thirty days	When notice of the award is delivered to the plaintiff.
2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.	<i>Part II.—Ninety days.</i> Ninety days	When the act or omission takes place.
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property. I of 1877.	<i>Part III.—Six months.</i> Six months	When the dispossession occurs.
4.—Under the Employers and Workmen (Disputes) Act, 1860, section 1. XI of 1860.	Ditto	When the wages, hire or price of work claimed accrue or accrues due.



## (The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part III.—Six months—contd.</i>	
5.—Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908.	Six months .	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
	<i>Part IV.—One year.</i>	
6.—Upon a Statute, Act, Regulation or By-law, for a penalty or forfeiture,	One year .	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan or labourer not provided for by this schedule, article 4.	Ditto .	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Ditto .	When the food or drink is delivered.
9.—For the price of lodging	Ditto .	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto .	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.

V. of  
1908.

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>11.—By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order :</p> <p>(1) Order under the Code of Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree ;</p> <p>(2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.</p> <p>11A.—By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in</p>	<p><i>Part IV.—One year—contd.</i></p> <p>One year . . .</p> <p>Ditto . . .</p>	<p>The date of the order.</p> <p>The date of the order.</p>

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.</p>	<p><i>Part IV.—One year—contd.</i></p>	
<p>12.—To set aside any of the following sales:—</p> <p>(a) sale in execution of a decree of a Civil Court;</p> <p>(b) sale in pursuance of a decree or order of a Collector or other officer of revenue;</p> <p>(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears;</p>	<p>One year . . .</p>	<p>When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.</p>

(d) sale

## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
(d) sale of a patni taluq sold for current arrears of rent.	<i>Part IV.—One year—contd.</i>	
<i>Explanation.</i> —In this article “patni” includes any intermediate tenure saleable for current arrears of rent.		
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	One year . .	The date of the final decision or order in the case by a Court competent to determine it finally.
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Ditto . .	The date of the act or order.
15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue-authorities for arrears of Government revenue.	Ditto . .	When the attachment, lease or transfer is made.

16.—Against

## (The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.—One year—contd.</i>	
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	One year . .	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	Ditto . .	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto . .	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto . .	When the imprisonment ends.
20.—By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	Ditto . .	The date of the death of the person wronged. <div>XII of 1855.</div>
21.—By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	Ditto . .	The date of the death of the person killed. <div>XIII of 1855.</div>

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.—One year—contd.</i>	
22.—For compensation for any other injury to the person.	One year . . .	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto . . .	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel.	Ditto . . .	When the libel is published.
25.—For compensation for slander.	Ditto . . .	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto . . .	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto . . .	The date of the breach.
28.—For compensation for an illegal, irregular or excessive distress.	Ditto . . .	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto . . .	The date of the seizure.
30.—Against a carrier for compensation for losing or injuring goods.	Ditto . . .	When the loss or injury occurs.

31.—Against

## (The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.—One year—concl'd.</i>	
31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year . .	When the goods ought to be delivered.
	<i>Part V.—Two years.</i>	
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years . .	When the perversion first becomes known to the person injured thereby.
33.—Under the Legal Representatives' Suits Act, 1855, against an executor.	Ditto . .	When the wrong complained of is done.
34.—Under the same Act against an administrator.	Ditto . .	Ditto
35.—Under the same Act against any other representative.	Ditto . .	Ditto
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Ditto . .	When the malfeasance, misfeasance or nonfeasance takes place.

XII of  
1855.

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years.</i>	
37.—For compensation for obstructing a way or a watercourse.	Three years . .	The date of the obstruction.
38.—For compensation for diverting a water-course.	Ditto . .	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto . .	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto . .	The date of the infringement.
41.—To restrain waste .	Ditto . .	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto . .	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto . .	The date of the payment or distribution.



## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>44.—By a ward who has attained majority, to set aside a transfer of property by his guardian.</p> <p>45.—To contest an award under any of the following Regulations of the Bengal Code :—</p> <p>The Bengal Land-revenue Settlement Regulation, 1822.</p> <p>The Bengal Land-revenue Settlement Regulation, 1825.</p> <p>The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.</p> <p>46.—By a party bound by such award to recover any property comprised therein.</p>	<i>Part VI.—Three years—contd.</i>	
	Three years	When the ward attains majority.
	Ditto	The date of the final award or order in the case.
	Ditto	The date of the final award or order in the case.

VII of  
1822.IX of  
1825.IX of  
1833.

## (The First Schedule.—First Division : Suits.)

## THE FIRST SCHEDULE—contd.

## FIRST DIVISION : SUITS—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>V of 1898. Bom. II of 1906.</p> <p>47.—By any person bound by an order respecting the possession of immoveable property made under the Code of Criminal Procedure, 1898, or the Mamlatdars' Courts Act, 1906, or by any one claiming under such person, to recover the property comprised in such order.</p> <p>48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.</p> <p>49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.</p>	<i>Part VI.—Three years—contd.</i>	
	Three years .	The date of the final order in the case.
	„	.
	Ditto .	When the person having the right to the possession of the property first learns in whose possession it is.
	Ditto .	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
50.—For the hire of animals, vehicles, boats or household furniture.	Three years .	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto .	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto .	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto .	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto .	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto .	The date of the sale.

*(The First Schedule,—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—contd.</i>		
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years	. When the work is done.
57.—For money payable for money lent.	Ditto	. When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto	. When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto	. When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Ditto	. When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto	. When the money is paid.

## (The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto	When the time specified arrives or the contingency happens.
66.—On a single bond, where a day is specified for payment.	Ditto	The day so specified.
67.—On a single bond, where no such day is specified.	Ditto	The date of executing the bond.

*(The First Schedule.—First Division: Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—contd.</i>		
68.—On a bond subject to a condition.	Three years	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto	When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto	When the bill is presented.
71.—On a bill of exchange; accepted payable at a particular place.	Ditto	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.

## (The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	Three years . . .	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto . . .	The date of the delivery to the payee.
77.—On a dishonoured foreign bill, where protest has been made and notice given.	Ditto . . .	When the notice is given.
78.—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Ditto . . .	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer.	Ditto . . .	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto . . .	When the bill, note or bond becomes payable.

## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—contd.</i>		
81.—By a surety against the principal debtor.	Three years	When the surety pays the creditor.
82.—By a surety against a co-surety.	Ditto	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto	When the plaintiff is actually damnified.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Ditto	The close of the year in which the last item admitted or proved is entered in the account ; such year to be computed as in the account.
86.—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto	When proof of the death or loss is given or received to or by the insurer, whether by or from the plaintiff, or any other person.



*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	Ditto	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto	Ditto.
90.—Other suits by principals against agents for neglect or misconduct.	Ditto	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto	When the issue or registration becomes known to the plaintiff.

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.

*(The First Schedule.—First Division: Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	<i>Part VI.—Three years—contd.</i> Three years .	The date of the payment in excess of the plaintiff's own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto .	When the right to contribution accrues.
101.—For a seaman's wages	Ditto .	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto .	When the wages accrue due.
103.—By a Muhammadan for exigible dower ( <i>mu'ajjal</i> ).	Ditto .	When the dower is demanded and refused or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.

104.—By

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
104.—By a Muhammadan for deferred dower ( <i>mu'wajjal</i> ).	Three years	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Ditto	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto	When the profits are received.

## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—concl'd.</i>	
110.—For arrears of rent .	Three years .	When the arrears become due.
111.—By a vendor of immoveable property for personal payment of unpaid purchase-money.	Ditto .	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto .	When the call is payable.
113.—For specific performance of a contract.	Ditto .	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Ditto .	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Ditto .	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VII.— Six years.</i>	
116.—For compensation for the breach of a contract in writing registered.	Six years . . .	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure, 1908.	Ditto . . .	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Ditto . . .	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Ditto . . .	When the rights of the adopted son, as such, are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto . . .	When the right to sue accrues.
	<i>Part VIII.— Twelve years.</i>	
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluk or other saleable tenure sold for arrears of rent.	Twelve years . . .	When the sale becomes final and conclusive.

122.—Upon

## (The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
122.—Upon a judgment obtained in British India, or a recognisance.	<i>Part VIII.— Twelve years— contd.</i> Twelve years	The date of the judgment or recognisance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto . .	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto . .	When the defendant takes possession of the office adversely to the plaintiff.  <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the	Ditto . .	The date of the alienation.

## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
female declared to be void except for her life or until her re-marriage.	<i>Part VIII.— Twelve years— contd.</i>	
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Twelve years	When the alienee takes possession of the property.
127.—By a person excluded from joint family property to enforce a right to share therein.	Ditto	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Ditto	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Ditto	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Ditto	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	Ditto	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	Ditto	When the money sued for becomes due.

*Explanation.—*



## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p><i>Explanation.</i>—The allowance and fees respectively called <i>malikana</i> and <i>haggs</i> shall, for the purpose of this article, be deemed to be money charged upon immoveable property.</p> <p>133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.</p> <p>134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.</p>	<p><i>Part VIII.— Twelve years— contd.</i></p> <p>Twelve years .</p> <p>Ditto . .</p>	<p>The date of the purchase.</p> <p>The date of the transfer.</p>

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	<i>Part VIII.— Twelve years— contd.</i> Twelve years . .	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale.	Ditto . .	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto . .	When the judgment-debtor is first entitled to possession.
138.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	Ditto . .	The date when the sale becomes absolute.
139.—By a landlord to recover possession from a tenant.	Ditto . .	When the tenancy is determined.

## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.</p> <p>141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.</p> <p>142.—For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.</p> <p>143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.</p> <p>144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.</p>	<p><i>Part VIII.—</i> <i>Twelve years—</i> <i>concl.</i></p> <p>Twelve years</p> <p>Ditto</p> <p>Ditto</p> <p>Ditto</p> <p>Ditto</p>	<p>When his estate falls into possession.</p> <p>When the female dies.</p> <p>The date of the dispossession or discontinuance.</p> <p>When the forfeiture is incurred or the condition is broken.</p> <p>When the possession of the defendant becomes adverse to the plaintiff.</p>

*(The First Schedule.—First Division : Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IX.—Thirty years.</i>	
145.—Against a depository or pawnee to recover moveable property deposited or pawned.	Thirty years .	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto .	When any part of the principal or interest was last paid on account of the mortgage-debt.
146A.—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Ditto .	The date of the dispossession or discontinuance.
	<i>Part X.—Sixty years.</i>	
147.—By a mortgagee for foreclosure or sale.	Sixty years .	When the money secured by the mortgage becomes due.

148.—Against

*(The First Schedule.—First Division: Suits.)*

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*concl'd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	<i>Part X.—Sixty years—contd.</i>  Sixty years	When the right to redeem or to recover possession accrues :  Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May 1868 shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto	When the period of limitation would begin to run under this Act against a like suit by a private person.

SECOND DIVISION :

## (The First Schedule.—Second Division : Appeals.)

THE FIRST SCHEDULE—*contd.*

## SECOND DIVISION : APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
V of 1898. 150.—Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session.	Seven days .	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days .	The date of the decree or order.
V of 1908. 152.—Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days .	The date of the decree or order appealed from.
153.—Under the same Code to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council.	Ditto .	The date of the order.
154.—Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	Ditto .	The date of the sentence or order appealed from.

155.—Under

## (The First Schedule.—Second Division : Appeals.)

THE FIRST SCHEDULE—*contd.*SECOND DIVISION : APPEALS—*contd.*

Description of appeal.	Period of limitation.	Time from which period begins to run.
155.—Under the same Code to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days	The date of the sentence or order appealed from.
156.—Under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days	The date of the decree or order appealed from. V of 1908.
157.—Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months	The date of the order appealed from. V of 1898.

THIRD DIVISION :

*(The First Schedule.—Third Division : Applications.)*THE FIRST SCHEDULE—*contd.*

## THIRD DIVISION : APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
V of 1908. 158.—Under the Code of Civil Procedure, 1908, to set aside an award.	Ten days . .	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) of the same Code.	Ditto . .	When the summons is served.
160.—For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days . .	When the application for review is rejected.
161.—For a review of judgment by a Provincial Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto . .	The date of the decree or order.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days . .	Ditto.



## (The First Schedule.—Third Division: Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
163.—By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of the dismissal.
164.—By a defendant, for an order to set aside a decree passed <i>ex parte</i> .	Ditto	The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree.
165.—Under the Code of Civil Procedure, 1908, by a person dispossessed of immoveable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto	The date of the dispossession. <span style="float: right;">V of 1908.</span>
166.—Under the same Code to set aside a sale in execution of a decree.	Ditto	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.	Ditto	The date of the resistance or obstruction.

## (The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
168.—For the readmission of an appeal dismissed for want of prosecution.	Thirty days	The date of the dismissal.
169.—For the re-hearing of an appeal heard <i>ex parte</i> .	Ditto	The date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170.—For leave to appeal as a pauper.	Ditto	The date of the decree appealed from.
V of 1908. 171.—Under the Code of Civil Procedure, 1908, for an order to set aside an abatement.	Sixty days	The date of the abatement.
172.—Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Ditto	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days	The date of the decree or order.

## (The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
174.—For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ninety days	When the payment or adjustment is made.
175.—For payment of the amount of a decree by instalments.	Six months	The date of the decree.
176.—Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ditto	The date of the death of the deceased plaintiff or appellant.
177.—Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Ditto	The date of the death of the deceased defendant or respondent.
178.—Under the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court.	Ditto	The date of the award.

*(The First Schedule.—Third Division : Applications.)*THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
179.—By a person desiring to appeal under the same Code to His Majesty in Council for leave to appeal.	Six months .	The date of the decree appealed from.
180.—By a purchaser of immoveable property at a sale in execution of a decree for delivery of possession.	Three years .	When the sale becomes absolute.
181.—Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	Ditto .	When the right to apply accrues.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years ; or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or

## (The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908— <i>contd.</i>	Three years ; or, where a certified copy of the decree or order has been registered, six years.	<p>4. (where the decree has been amended) the date of amendment, or</p> <p>5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or</p> <p>6. (where the notice next hereinafter mentioned has been issued) the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the Code of Civil Procedure, 1908, or 1908<sup>v of</sup>.</p> <p>7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.</p> <p><i>Explanation 1.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned</p>

*(The First Schedule.—Third Division : Applications.)*THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908— <i>concl'd.</i>	Three years; or, where a certified copy of the decree or order has been registered, six years.	<p>in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation II.</i>—"Proper Court" means the Court whose duty it is to execute the decree or order.</p>

(The First Schedule.—Third Division: Applications. The Second Schedule.—Territories referred to in section 31.)

THE FIRST SCHEDULE—*concl'd.*

THIRD DIVISION : APPLICATIONS—*concl'd.*

Description of application.	Period of limitation.	Time from which period begins to run.
183.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.	Twelve years .	When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be.

THE SECOND SCHEDULE.

TERRITORIES REFERRED TO IN SECTION 31.

(See section 31.)

The Presidency of Fort St. George.

The Presidency of Bombay.

The Sambalpur District of the Bengal Division of the Presidency of Fort William.

The United Provinces of Agra and Oudh.

Burma.

The Central Provinces.

Ajmer-Merwara.

THE THIRD SCHEDULE.

*(The Third Schedule.—Enactments repealed.)*

## THE THIRD SCHEDULE.

## ENACTMENTS REPEALED.

*(See section 32.)*

Year.	No.	Short title.	Extent of repeal.
1877	XV	The Indian Limitation Act, 1877.	The whole.
1877	XVII	The Punjab Courts Act, 1877.	So much as has not been repealed.
1879	XII	The Registration and Limitation Acts Amendment Act, 1879.	In the title the words "and the Limitation Act, 1877", and after section 107, from the words "and whereas" to the end of the Act.
1881	V	The Probate and Administration Act, 1881.	Section 156.
1887	IX	The Provincial Small Cause Courts Act, 1887.	Section 36.
1888	VII	The Civil Procedure Code Amendment Act, 1888.	In the title and in the preamble, the words "and the Indian Limitation Act, 1877", and of section 66 so much as has not been repealed.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and in the preamble, the words "the Indian Limitation Act, 1877", and section 1.
1899	X	The Carriers Act, 1899.	Section 3.



(*The Third Schedule.—Enactments repealed.*)

THE THIRD SCHEDULE—*concl'd.*

ENACTMENTS REPEALED—*concl'd.*

(*See section 32.*)

Year.	No.	Short title.	Extent of repeal.
1900	VI	The Lower Burma Courts Act, 1900.	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.
1900	XI	The Indian Limitation Amendment Act, 1900.	The whole.
1906	IV	The Presidency Small Cause Courts Act, 1906.	Section 5.

## ACT NO. X OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 11th September, 1908.)*

An Act to make special provision for the payment of duty on salt in certain cases.

WHEREAS it is expedient to make special provision for the payment of duty on salt in certain cases; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Salt-duties Act, 1908; and

Short title  
and extent.

(2) It extends to the whole of British India.

2. Where by any enactment any duty is imposed on any salt manufactured in or imported into or transported within British India, the Governor General in Council or the Local Government may, by notification in the official Gazette, make rules providing for the payment of such duty within a period not exceeding six months from the date on which payment is due, and for the furnishing of security for such payment; and salt may be manufactured, imported or transported in accordance with rules so made as if the duty payable thereon had been paid.

Payment of  
duty in  
certain cases.

## ACT No. XI OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 11th  
September, 1908.)*

### An Act to amend the Assam Labour and Emigration Act, 1901.

**WHEREAS** it is expedient to amend the Assam Labour and Emigration Act, 1901; It is hereby VI of 1901.  
enacted as follows :—

Short title.

1. This Act may be called the Assam Labour and Emigration (Amendment) Act, 1908.

Substitution  
of new sec-  
tion for  
section 91,  
Act VI, 1901.  
Power to  
Local Gov-  
ernment to  
relax certain  
provisions of  
Act.

2. For section 91 of the Assam Labour and Emigration Act, 1901, the following shall be substi- VI of 1901.  
tuted, namely :—

“91. Notwithstanding anything contained in section 90, the Local Government may, by notification in the local official Gazette, declare that—

(a) in the case of contractors, sub-contractors and recruiters holding licenses granted under Chapter III, any of the requirements of that Chapter, or,

(b) in the case of garden-sardars holding certificates granted under Chapter IV or holding permits granted and countersigned under section 90, any of the requirements of that Chapter or of that section, as the case may be,

may be dispensed with or relaxed on such conditions as may be prescribed in the notification.”

Substitution  
of new sec-  
tion for  
section 218,  
Act VI of  
1901.  
Application  
of proceeds

3. For section 218 of the said Act the following shall be substituted, namely :—

“218. The proceeds of any fines, fees and rates under this Act which may be credited to Government shall

shall be expended, in such manner as the Governor General in Council may direct, on paying the salaries and allowances of officers appointed under this Act and their pensionary and leave allowances, on meeting the cost of sending labourers and other persons back to their native districts, and generally on defraying the expenses of carrying out the purposes and objects of this Act and any rules made thereunder, and not otherwise.”

of fines, fees  
and rates.

## ACT No. XII OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 30th  
October 1908.*)

### An Act further to amend the Indian Emigration Act, 1883,

WHEREAS it is expedient further to amend the Indian Emigration Act, 1883; It is hereby enacted as follows:— XXI of 1883.

Short title.

1. This Act may be called the Indian Emigration (Amendment) Act, 1908.

Meaning of "India" in Act XXI of 1883.

2. In the Indian Emigration Act, 1883, the word "India", wherever it occurs, shall bear the meaning given to it by clause (27) of section 3 of the General Clauses Act, 1897. XXI of 1883.

Omission of proviso in section 6 of Act XXI of 1883.

3. In section 6 of the Indian Emigration Act, 1883, the proviso to clause (2) shall be omitted. X of 1897.  
XXI of 1883.

Insertion of new section after section 6 of Act XXI of 1883.

4. After section 6 of the said Act the following section shall be inserted, namely:—

Determination of certain doubts.

"6A. In case of any doubt or dispute as to whether a person should be deemed —

(i) to emigrate, or

(ii) to be a native of India,

within the meaning of this Act, the question shall be determined by such person and in such manner as the Governor General in Council may from time to time, by rules made under this Act, direct, and such determination shall be final."

Amendment of section 18 (1) of Act XXI of 1883.

5. In section 18, sub-section (1), of the said Act,—

(a) for the words "a Medical Inspector" the words "one or more Medical Inspectors" shall be substituted;

(b) after

(b) after the word “lawful” the words “and may apportion their respective duties” shall be inserted; and

(c) for the word “him” the word “them” shall be substituted.

6. In section 80, sub-section (1), the word “and”, where it last occurs in clause (p), shall be omitted, and after the said clause the following shall be inserted, namely :—

Addition to  
new clause in  
section 80  
(1) of Act  
XXI of  
1883.

“(pp) to prescribe the person by whom any doubt or dispute referred to in section 6A shall be determined and the procedure to be followed and the proof to be required in such cases; and”.

## ACT NO. XIII OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 30th  
October 1908.)

An Act to provide for the appointment of a Financial Commissioner for the Central Provinces and further to amend the Central Provinces Land-revenue Act, 1881.

WHEREAS it is expedient to appoint a Financial Commissioner for the Central Provinces and further to amend the Central Provinces Land-revenue Act, 1881; It is hereby enacted as follows:— XVIII of 1881.

Short title  
and com-  
mencement.

1. (1) This Act may be called the Central Provinces Financial Commissioner's Act, 1908; and

(2) It shall come into force on such date as the Chief Commissioner, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, direct.

Appointment  
of Financial  
Commis-  
sioner.

2. (1) There shall be a Financial Commissioner for the Central Provinces.

(2) The Chief Commissioner, with the previous sanction of the Governor General in Council, shall appoint, and may suspend or remove, the Financial Commissioner.

Assignment  
of powers  
to Financial  
Commis-  
sioner.

3. The Chief Commissioner, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, assign to the Financial Commissioner, subject to such conditions and restrictions, if any, as the Chief Commissioner with the like sanction may prescribe, all or any powers or functions assigned to the Local Government or to the Chief Commissioner or to the Chief Revenue-authority or the Chief Controlling Revenue-authority by any enactment for the time being in force.

4. For sections 5 and 6 of the Central Provinces Land-revenue Act, 1881, the following shall be substituted, namely :—

Substitution of new sections for sections 5 and 6, Act XVIII, 1881. Revenue-officers.

XVIII of 1881.

“ 5. There shall be the following classes of Revenue-officers, namely :—

the Chief Commissioner,  
the Financial Commissioner,  
Commissioners,  
Deputy Commissioners,  
Assistant Commissioners,  
Tahsildars,  
Naib-tahsildars.

“ 6. (1) The Chief Commissioner shall, in all revenue matters, be subject to the control of the Governor General in Council.

Subordination of officers.

(2) The Financial Commissioner shall be subject to the control of the Chief Commissioner.

(3) All other Revenue-officers shall be subordinate to the Chief Commissioner and the Financial Commissioner ; all Revenue-officers in a division shall be subordinate to the Commissioner of the division ; and all Revenue-officers in a district shall be subordinate to the Deputy Commissioner of the district.

(4) An officer in charge of a village-survey in a district which is not under settlement may be invested by the Chief Commissioner with the powers of a Revenue-officer of any class, and, when so invested, shall be subordinate to such officer or officers as the Chief Commissioner may direct.”

5. In sections 17 and 25 of the said Act, after the words “ Chief Commissioner ”, wherever they occur, the words “ or the Financial Commissioner ” shall be added.

Amendment of sections 17 and 25, Act XVIII, 1881.

6. In sections 22, clause (c), and 23, clause (c), of the said Act, for the words “ Chief Commissioner ” the words “ Financial Commissioner ” shall be substituted.

Amendment of sections 22 and 23, Act XVIII, 1881.



## ACT No. XIV OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 11th  
December 1908.*)

An Act to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace; It is hereby enacted as follows:—

Short title  
and extent.

1. (1) This Act may be called the Indian Criminal Law Amendment Act, 1908.

(2) It extends to the Provinces of Bengal and of Eastern Bengal and Assam; but the Governor General in Council may, at any time, by notification in the Gazette of India, extend the whole or any Part thereof to any other Province.

(3) When extending Part I to any province under sub-section (2) the Governor General in Council may declare the operation of the provisions of that Part relating to the constitution of the Special Bench to be subject to such modifications as may in the opinion of the Governor General in Council be necessary to adapt those provisions to the circumstances of that Province.

### PART I.

#### SPECIAL PROCEDURE.

Application  
of Part.

2. (1) Where a Magistrate has taken cognizance of any offence specified in the schedule, and it appears to the Governor General in Council or to the Local Government

Government that in the interests of peace and good order the provisions of this Part should be made to apply to proceedings in respect of such offence, the Governor General in Council, or the Local Government, with the previous sanction of the Governor General in Council, may make an order in writing to that effect and may by such order direct that the provisions of this Part shall apply to such proceedings.

V of 1898.

(2) No order shall be made under sub-section (1) in any case in which an order of commitment to the High Court or Court of Session has been made under the Code of Criminal Procedure, 1898; but, save as aforesaid, an order may be made in respect of any offence whether committed before or after the commencement of this Act, or, in the case of a Province to which this Part is extended under section 1, before or after such extension.

3. (1) On receipt of an order under section 2 the Magistrate who has taken cognizance of the offence, or any other Magistrate to whom the case has been transferred, shall proceed to inquire whether the evidence offered upon the part of the prosecution is sufficient to put the accused upon his trial for an offence specified in the Schedule, and shall for that purpose record on oath the evidence of all such persons as may be produced in support of the prosecution, and may record any statement of the accused if voluntarily tendered by him.

Inquiry by Magistrate.

V of 1898.

(2) Where before the commencement of proceedings under this Act the evidence of a witness has been recorded under the Code of Criminal Procedure, 1898, in the course of an inquiry into the same offence as that to which such proceedings relate, such evidence may be treated for the purposes of this Act as if it had been taken under sub-section (1).

4. The accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs, nor shall he be represented by a pleader during any such inquiry, nor shall any per-

Inquiry to be *ex parte*.

son

son have any right of access to the Court of the Magistrate while he is holding such inquiry.

When accused person to be discharged.

5. When the evidence referred to in section 3 has been taken, the Magistrate shall, if he finds that it is not sufficient to put the accused upon his trial for an offence specified in the Schedule, record his reasons and discharge the accused, unless it appears to the Magistrate that the accused should be tried or committed for trial under the provisions of the Code of Criminal Procedure, 1898, for any other offence, in which case the Magistrate shall proceed accordingly.

V

Power to send accused for trial.

6. When upon such evidence being taken the Magistrate is satisfied that it is sufficient to put the accused upon his trial for an offence specified in the Schedule, he shall—

- (a) frame a charge under his hand declaring with what offence the accused is charged;
- (b) make an order directing that the accused be sent to the High Court for trial; and
- (c) cause the accused to be supplied with a copy of the order and of the charge and of the evidence taken under section 3.

Joinder of charges.

7. In framing any charge under section 6 the Magistrate may also frame a charge for any offence not specified in the Schedule with which the accused may be charged at the same trial, and the procedure of this Act shall apply to any such charge.

Charge, etc., to be forwarded to High Court.

8. When an order for trial has been made under section 6, the Magistrate shall send the order together with the charge, the record of inquiry and anything which is to be produced in evidence to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Power to summon supplementary witnesses.

9. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the order for trial and before the commencement of the trial.

(2) When.

(2) When the Magistrate examines witnesses under sub-section (1), he shall forthwith cause the accused to be supplied with a copy of the evidence of such witnesses.

10. The accused may at any time before his trial give to the Clerk of the Crown or other officer as aforesaid a list of the persons whom he wishes to be summoned to give evidence on his trial.

Witnesses  
for defence.

11. (1) All persons sent for trial to the High Court under this Act shall be tried by a Special Bench of the Court composed of three Judges.

Procedure in  
High Court.

(2) No trial before the Special Bench shall be by jury.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

12. No person who has been remanded to custody in the course of proceedings under this Act shall be released on bail under the provisions of section 497 of the Code of Criminal Procedure, 1898, if there appear to be sufficient grounds for further inquiry into the guilt of such person.

Bail.

V of 1898.

13. Notwithstanding anything contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a Magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused.

Special rule  
of evidence.

I of 1872.

14. (1) The provisions of the Code of Criminal Procedure, 1898, shall not apply to proceedings taken under this Part in so far as they are inconsistent with the special procedure prescribed in this Part.

Procedure.

V of 1898.

(2) When holding a trial under section 11, the Special Bench shall apply the provisions of Chapter XXIII of the said Code with such modifications as

may appear necessary to adapt those provisions to the case of a trial before the High Court without a jury.

## PART II.

### UNLAWFUL ASSOCIATIONS.

#### Definitions.

#### 15. In this Part—

(1) “association” means any combination or body of persons, whether the same be known by any distinctive name or not; and

(2) “unlawful association” means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by the Governor General in Council under the powers hereby conferred.

#### Power to declare association unlawful

16. If the Governor General in Council is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Governor General in Council may, by notification in the official Gazette, declare such association to be unlawful.

#### Penalties.

17. (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association,

or

or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

18. An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

Continuance  
of association.

## THE SCHEDULE.

(See section 3.)

1. Any offence under the following sections of the Indian Penal Code, namely :—

XLV of  
1860.

Chapter VI, sections 121, 121A, 122, 123 and 124.

Chapter VII, sections 131 and 132.

Chapter VIII, section 148.

Chapter XVI, sections 302, 304, 307, 308, 326, 327, 329, 332, 333, 363, 364, 365 and 368.

Chapter XVII, sections 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 451, 455, 457, 458, 459 and 460.

Chapter XXII, section 506.

2. Any offence under the Explosive Substances Act, 1908 ; and

VI of 1908.

3. Any attempt to commit or any abetment of any of the above offences.

# THE INDIAN PORTS ACT, 1908 (XV OF 1908).

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## C O N T E N T S.

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## CHAPTER IV.

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THE FIRST SCHEDULE.—PORTS, VESSELS CHARGEABLE,  
RATE OF PORT-DUES AND FREQUENCY OF PAYMENT.

THE SECOND SCHEDULE.—ENACTMENTS REPEALED.

## ACT No. XV OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 18th  
December 1908.)*

An Act to consolidate the Enactments relating  
to Ports and Port-charges.

**WHEREAS** it is expedient to consolidate the  
enactments relating to ports and port-charges ;  
It is hereby enacted as follows :—

### CHAPTER I.

#### PRELIMINARY.

1. (1) This Act may be called the Indian Ports Title and  
extent.  
Act, 1908.

(2) It shall extend, save as otherwise appears from  
its subject or context,—

(a) to the ports mentioned in the first schedule,  
and to such parts of the navigable rivers  
and channels leading to such ports respec-  
tively as have been declared to be subject  
to Act XXII of 1855 (*for the Regulation  
of Ports and Port-dues*) or to the Indian  
Ports Act, 1875, or to the Indian Ports  
Act, 1889 ;

XIII of 1875.

X of 1889.

(b) to the other ports or parts of navigable  
rivers or channels to which the Local  
Government, in exercise of the power  
hereinafter conferred, extends this Act.

(3) But nothing in section 31 or section 32 shall  
apply to any port, river or channel to which the  
section has not been specially extended by the Local  
Government.

2. Nothing

*(Chapter I.—Preliminary.)*

Savings.

## 2. Nothing in this Act shall—

- (i) apply to any vessel belonging to, or in the service of, His Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State, or
- (ii) deprive any person of any right of property or other private right, except as hereinafter expressly provided, or
- (iii) affect any law or rule relating to the customs or any order or direction lawfully made or given pursuant thereto.

Definitions.

## 3. In this Act, unless there is anything repugnant in the subject or context,—

(1) “Magistrate” means a person exercising powers under the Code of Criminal Procedure, 1898, not less than those of a Magistrate of the second class, and includes, in the towns of Calcutta, Madras and Bombay, a Presidency Magistrate; V of 1898.

(2) “master,” when used in relation to any vessel, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour-master) having for the time being the charge or control of the vessel :

(3) “pilot” means a person for the time being authorized by the Local Government to pilot vessels :

(4) “port” includes also any part of a river or channel in which this Act is for the time being in force :

(5) “port-officer” is synonymous with master-attendant :

(6) “ton” means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships : and

(7) “vessel” includes anything made for the conveyance by water of human beings or of property.

4. (1) With

*(Chapter II.—Powers of the Local Government.)*

## CHAPTER II.

## POWERS OF THE LOCAL GOVERNMENT.

4. (1) With the previous sanction of the Governor General in Council, the Local Government may, by notification in the local official Gazette,—

Power to extend or withdraw the Act or certain portions thereof.

(a) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to a port and in which this Act is not in force ;

(b) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended ;

(c) withdraw this Act or section 31 or section 32 from any port or any part thereof in which it is for the time being in force.

(2) A notification under clause (a) or clause (b) of sub-section (1) shall define the limits of the area to which it refers.

(3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches, whether within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark.

(4) In sub-section (3) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year.

5. (1) The Local Government may, with the previous sanction of the Governor General in Council and subject to any rights of private property, alter the limits of any port in which this Act is in force.

Alteration of limits of ports.

(2) When the Local Government alters the limits of a port under sub-section (1), it shall declare or describe

*(Chapter II.—Powers of the Local Government.)*

describe, by notification in the local official Gazette, and by such other means, if any, as it thinks fit, the precise extent of such limits.

Power to  
make port-  
rules.

6. (1) The Local Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely :—

- (a) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act ;
- (b) for regulating the berths, stations and anchorages to be occupied by vessels in any such port ;
- (c) for striking the yards and top masts, and for rigging-in the booms and yards, of vessels in any such port, and for swinging or taking-in davits, boats and other things projecting from such vessels ;
- (d) for the removal or proper hanging or placing of anchors, spars and other things being in or attached to vessels in any such port ;
- (e) for regulating vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged ;
- (f) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing-places, wharves, quays, docks, moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free ;
- (g) for regulating the anchoring, fastening, mooring and unmooring of vessels in any such port ;

(h) for

*(Chapter II.—Powers of the Local Government.)*

- (h) for regulating the moving and warping of all vessels within any such port and the use of warps therein ;
- (i) for regulating the use of the mooring buoys chains and other moorings in any such port ;
- (j) for fixing the rates to be paid for the use of such moorings when belonging to the Government, or of any boat, hawser or other thing belonging to the Government ;
- (k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port, and for determining the quantity of cargo or number of passengers to be carried by any such vessels ;
- (l) for regulating the use of fires and lights within any such port ;
- (m) for enforcing and regulating the use of signals or signal-lights by vessels by day or by night in any such port ;
- (n) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port ;
- (o) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port ;
- (p) with the previous sanction of the Governor General in Council, for the establishment and regulation of places to be used as sanatoria for the segregation or as hospitals for the treatment of persons who are or have recently been suffering from any dangerous infectious or contagious disease,  
and

*(Chapter II.—Powers of the Local Government.)*

and for regulating the action, including the disposal of dead bodies, to be taken—

- (i) where a vessel on which there is any case of dangerous infectious or contagious disease common in India, enters or is in any such port;
- (ii) where a vessel on which there is any case of dangerous infectious or contagious disease uncommon in India, enters or is in any such port;
- (iii) where a vessel on which there has been any case of dangerous infectious or contagious disease or any death within twelve days previous to the arrival of the vessel at such port, enters or is in any such port;
- (iv) where a vessel enters any such port from a port in which, or in the neighbourhood of which, there is believed to be, or to have been at the time when the vessel left such port, any dangerous infectious or contagious disease uncommon in India;
- (v) where a vessel enters any such port having on board any person transhipped from a vessel coming from a port in which or in the neighbourhood of which there is believed to be or to have been at the time when such last-mentioned vessel left such last-mentioned port, any dangerous infectious or contagious disease uncommon in India;
- (vi) where there is a dead body on board a vessel in any such port;
- (vii) where

*(Chapter II.—Powers of the Local Government.)*

- (vii) where there are on board a vessel in any such port foodstuffs which, owing to decomposition or for any other reason, are, in the opinion of the health-officer, unfit for human consumption; or
- (viii) where a vessel leaves any such port while there is in the port or in its neighbourhood any dangerous infectious or contagious disease uncommon in India; for the purposes of this clause only such diseases shall be deemed to be dangerous infectious or contagious diseases, or diseases common or uncommon in India, as the Governor General in Council may by order direct; and
- (q) for securing the protection from heat of the officers and crew of vessels in any such port by requiring the owner or master of any such vessel—
  - (i) to provide curtains and double awnings for screening from the sun's rays such portions of the deck as are occupied by, or are situated immediately above, the quarters of the officers and crew;
  - (ii) to erect windsails so far as the existing portholes or apertures in the deck admit of their being used for ventilating the quarters of the officers and crew;
  - (iii) when the deck is made of iron and not wood-sheathed, to cover with wooden planks or other suitable non-conducting material such portions of the deck as are situated



(Chapter II.—Powers of the Local Government.  
Chapter III.—Port-officials and their Powers  
and Duties.)

situated immediately above the quarters of the officers and crew ;

- (iv) when the quarters used by the crew and the galley are separated by an iron bulkhead only, to furnish a temporary screen of some suitable non-conducting material between such quarters and the galley.

(2) The power to make rules under sub-section (1) is subject to the condition of the rules being made after previous publication :

Provided that nothing in this sub-section shall be construed to affect the validity of any rule in force immediately before the commencement of the Indian Ports Act, 1889, and continued by section 2, sub-section (2), of that Act. X of 1889.

(3) If any person disobeys any rule made under clause (p) of sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

(4) If a master fails wholly or in part to do any act prescribed by any rule made under clause (p) of sub-section (1), the health-officer shall cause such act to be done, and the reasonable expenses incurred in doing such act shall be recoverable by him from such master.

### CHAPTER III.

#### PORT-OFFICIALS AND THEIR POWERS AND DUTIES.

Appointment  
of conserva-  
tor.

7. (1) The Local Government shall appoint some officer or body of persons to be conservator of every port subject to this Act.

(2) Subject

(Chapter III.—*Port-officials and their Powers and Duties.*)

(2) Subject to any direction by the Local Government to the contrary,—

- (a) in ports where there is a port-officer, the port-officer shall be the conservator;
- (b) in ports where there is no port-officer, but where there is a harbour-master, the harbour-master shall be the conservator.

(3) Where the harbour-master is not conservator the harbour-master and his assistants shall be subordinate to, and subject to the control of, the conservator.

(4) The conservator shall be subject to the control of the Local Government, or of any intermediate authority which that Government may appoint.

8. (1) The conservator of any port subject to this Act may, with respect to any vessel within the port, give directions for carrying into effect any rule for the time being in force therein under section 6.

Power of conservator to give and enforce directions for certain specified purposes.

(2) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to one hundred rupees for every day during which, after such notice as aforesaid, he is proved to have wilfully and without lawful excuse continued to disobey the direction.

(3) In case of such refusal or neglect, the conservator may do, or cause to be done, all acts necessary for the purpose of carrying the direction into execution, and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

9. The

(Chapter III.—Port-officials and their Powers and Duties.)

Power to cut  
warps and  
ropes.

9. The conservator of any such port may, in case of urgent necessity, cut, or cause to be cut, any warp, rope, cable or hawser endangering the safety of any vessel in the port or at or near to the entrance thereof.

Removal of  
obstructions  
within limits  
of port.

10. (1) The conservator may remove, or cause to be removed, any timber, raft or other thing, floating or being in any part of any such port, which in his opinion obstructs or impedes the free navigation thereof or the lawful use of any pier, jetty, landing-place, wharf, quay, dock, mooring or other work on any part of the shore or bank which has been declared to be within the limits of the port and is not private property.

(2) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punishable with fine which may extend to one hundred rupees.

(3) The conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated.

Recovery of  
expenses of  
removal.

11. If the owner of any such timber, raft or other thing, or the person who has caused any such obstruction, impediment or public nuisance as is mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the local official Gazette or in such other manner as the Local Government by general or special order directs, the conservator may cause such timber, raft or other thing, or the materials of any public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction ;

and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay  
the

(Chapter III.—Port-officials and their Powers and Duties.)

the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same ;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the Local Government directs ;

and may, if necessary, from time to time, realize the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

12. (1) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the conservator shall report the same for the information of the Local Government, and shall, with the sanction of that Government, cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.

Removal of lawful obstructions.

(2) Any dispute arising concerning such compensation shall be determined according to the law relating to like disputes in the case of land required for public purposes.

13. (1) If any vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the Local Government in any such port, the master of such vessel shall not, nor shall any other person, except in case of emergency, lift the buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the conservator ;

Fouling of Government moorings.

and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel ;

and the master of such vessel shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same.

(2) Any

(Chapter III.—Port-officials and their Powers and Duties.)

(2) Any master or other person offending against the provisions of this section shall, for every such offence, be punishable with fine which may extend to one hundred rupees.

Raising or removal of wreck impeding navigation within limits of port.

14. (1) If any vessel is wrecked, stranded or sunk in any such port so as to impede, or be likely to impede, the navigation thereof, the conservator may cause the vessel to be raised, removed or destroyed.

(2) If any property recovered by a conservator acting under sub-section (1) is unclaimed or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent. of the amount of such expenses, the conservator may sell the property by public auction, if the property is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after the recovery thereof.

(3) The expenses and further sum aforesaid shall be payable to the conservator out of the sale-proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto:

Provided that the person makes his claim within three years from the date of the sale.

Power to board vessels and enter buildings.

15. (1) The conservator or any of his assistants may, whenever he suspects that any offence against this Act has been, or is about to be, committed, or whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

and the person appointed under this Act to receive any port-dues, fees or other charges payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

either

(Chapter III.—Port-officials and their Powers and Duties.)

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

(2) If the master of the vessel, or any person in possession or occupation of the building or place, without lawful excuse, refuses to allow any such person as is mentioned in sub-section (1) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall for every such offence be punishable with fine which may extend to two hundred rupees.

16. (1) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port-officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such master.

Power to require crews to prevent or extinguish fire.

(2) Any master refusing or neglecting to comply with such requisition shall be punishable with fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punishable with fine which may extend to twenty-five rupees.

17. (1) The Local Government may appoint at any port subject to this Act an officer to be called the health-officer.

Appointment and powers of health-officer.

(2) A health-officer shall, subject to the control of the Local Government, have the following powers, within the limits of the port for which he is appointed, namely :—

(a) with respect to any vessel, the powers conferred on a shipping-master by the Indian Merchant Shipping Act, 1859, section 71 ;

(b) power to enter on board any vessel and medically examine all or any of the seamen or apprentices on board the vessel ;

(c) power

(Chapter III.—Port-officials and their Powers and Duties. Chapter IV.—Rules for the Safety of Shipping and the Conservation of Ports.)

- (c) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board the vessel ;
- (d) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask ;
- (e) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

Indemnity of Government against act or default of port-official or pilot.

18. The Government shall not be responsible for any act or default of any conservator, port-officer or harbour-master, of any port subject to this Act, or of any deputy or assistant of any of the authorities aforesaid, or of any person acting under the control or direction of any such authority, deputy or assistant, or for any act or default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Government which may be used by the vessel :

Provided that nothing in this section shall protect the Secretary of State for India in Council from a suit in respect of any act done by or under the express order or sanction of the Government.

## CHAPTER IV.

### RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS.

#### *General Rules.*

Injuring buoys, beacons and moorings,

19. (1) No person shall, without lawful excuse, lift, injure, loosen or set adrift any buoy, beacon or mooring

(Chapter IV.—Rules for the Safety of Shipping and the Conservation of Ports.)

mooring fixed or laid down by, or by the authority of, the Local Government in any port subject to this Act.

(2) If any person offends against the provisions of this section, he shall for every such offence be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

20. If any person wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punishable with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

Wilfully loosening vessel from moorings.

21. (1) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods.

Improperly discharging ballast.

(2) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing, and the master of any vessel from which the same is so cast or thrown shall be punishable with fine which may extend to five hundred rupees, and shall pay any reasonable expenses which may be incurred in removing the same.

(3) If, after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing, any master continues so to cast or throw it, he shall also be liable to simple imprisonment for a term which may extend to two months.

(4) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is



(Chapter IV.—Rules for the Safety of Shipping and the Conservation of Ports.)

is cast or thrown into any such port with the consent in writing of the conservator, or within any limits within which such act may be authorized by the Local Government.

Graving vessel within prohibited limits.

22. If any person graves, breams or smokes any vessel in any such port, contrary to the directions of the conservator, or at any time or within any limits at or within which such act is prohibited by the Local Government, he and the master of the vessel shall for every such offence be punishable with fine which may extend to five hundred rupees each.

Boiling pitch on board vessel within prohibited limits.

23. If any person boils or heats any pitch, tar, resin, dammer, turpentine, oil or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the Local Government, or contrary to the directions of the conservator, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

Drawing spirits by unprotected artificial light.

24. If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

Warping.

25. (1) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

Leaving out warp or hawser after sunset.

26. (1) A master of a vessel shall not cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act after sunset

(Chapter IV.—*Rules for the Safety of Shipping and the Conservation of Ports.*)

sunset in such a manner as to endanger the safety of any other vessel navigating in the port.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

27. If any person, without lawful excuse, discharges any fire-arm in any port subject to this Act, or on or from any pier, landing-place, wharf or quay thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purpose as may be allowed by the Local Government, he shall for every such offence be punishable with fine which may extend to fifty rupees.

Discharge of  
fire-arms in  
port.

28. If the master of any vessel in which fire takes place while lying in any such port wilfully omits to take order to extinguish the fire or obstructs the conservator or the port-officer, or any person acting under the authority of the conservator or port-officer, in extinguishing or attempting to extinguish the fire, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty on  
master  
omitting to  
take order to  
extinguish  
fire.

29. (1) No person, without the permission of the conservator, shall, in any port subject to this Act, creep or sweep for anchors, cables or other stores lost or supposed to be lost therein.

Unauthor-  
ized person  
not to search  
for lost  
stores.

(2) If any person offends against the provisions of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

30. (1) No person without the permission of the conservator shall in any port subject to this Act remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port ;

Removing  
stones or in-  
juring shores  
of port pro-  
hibited.

and no person shall sink or bury in any part of such bank or shore, whether the same is public or private

(Chapter IV.—Rules for the Safety of Shipping and the Conservation of Ports.)

private property, any mooring-post, anchor or any other thing, or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(2) If any person offends against sub-section (1), he shall for every such offence be punishable with fine which may extend to one hundred rupees and shall pay any reasonable expenses which may be incurred in repairing any injury done by him to the bank or shore.

*Special Rules.*

Moving of  
vessels with-  
out pilot or  
permission of  
harbour-  
master.

31. (1) No vessel of the measurement of two hundred tons or upwards shall enter, leave or be moved in any port to which this section has been specially extended without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board ;

and no vessel of any measurement less than two hundred tons and exceeding one hundred tons shall enter, leave or be moved in any such port without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board unless authority in writing so to do has been obtained from the conservator or some officer empowered by him to give such authority.

(2) If any vessel, except in case of urgent necessity, enters, leaves or is moved in the port contrary to the provisions of sub-section (1), the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour-master to go on board the vessel.

(3) Nothing

(Chapter IV.—*Rules for the Safety of Shipping and the Conservation of Ports.* Chapter V.—*Port-dues, Fees and other Charges.*)

(3) Nothing in sub-sections (1) and (2) shall apply to native vessels when they are entering, leaving or being moved in the port of Bombay.

(4) If any question arises as to whether any vessel is a native vessel within the meaning of this section, the decision thereon of such authority as the Governor of Bombay in Council may appoint in this behalf shall be conclusive.

32. (1) Every vessel exceeding the measurement of two hundred tons and lying in any port to which this section has been specially extended shall be provided with a proper force-pump and hose and appurtenances, for the purpose of extinguishing any fire which may occur on board.

Provision of certain vessels with fire-extinguishing apparatus.

(2) The master of such a vessel who, having been required by the conservator to comply with the provisions of sub-section (1), neglects or refuses, without lawful excuse, so to do for the space of seven days after such requisition, shall be punishable with fine which may extend to five hundred rupees.

## CHAPTER V.

### PORT-DUES, FEES AND OTHER CHARGES.

33. (1) In each of the ports mentioned in the first schedule such port-due, not exceeding the amount specified for the port in the third column of the schedule as the Local Government directs, shall be levied on vessels entering the port and described in the second column of the schedule, but not oftener than the time fixed for the port in the fourth column of the schedule.

Levy of port-dues.

(2) Whenever the Local Government with the previous sanction of the Governor General in Council declares any other port to be subject to this Act, it may

*(Chapter V.—Port-dues, Fees and other Charges.)*

may, with the like sanction, by the same or any subsequent declaration, further declare,—

- (a) in the terms of any of the entries in the second column of the first schedule, the vessels which are to be chargeable with port-dues on entering the port,
- (b) the highest rates at which such dues may be levied in respect of vessels chargeable therewith, and
- (c) the times at which such vessels are to be so chargeable.

(3) All port-dues now leviabie in any port shall continue to be so leviabie until it is otherwise declared in exercise of the powers conferred by this section.

(4) An order increasing or imposing port-dues under this section shall not take effect till the expiration of sixty days from the day on which the order was published in the local official Gazette.

Variation of  
port-dues by  
Local Gov-  
ernment.

34. The Local Government may exempt the vessels entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be levied in the port, in such manner as, having regard to the receipts and charges on account of the port, it thinks expedient, by reducing or raising the dues, or any of them :

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.

Fees for  
pilotage and  
certain other  
services.

35. (1) Within any port subject to this Act, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Local Government may direct :

Provided that, in the case of fees for pilotage, the previous sanction of the Governor General in Council has been obtained.

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered

*(Chapter V.—Port-dues, Fees and other Charges.)*

altered in exercise of the power conferred by subsection (1).

36. (1) The Local Government shall appoint some officer or body of persons at every port at which any dues, fees or other charges are authorized to be taken by or under this Act to receive the same and, subject to the control of the Local Government, to expend the receipts on any of the objects authorized by this Act.

Receipt,  
expenditure  
and account  
of port-  
charges.

(2) Such officer or body shall keep for the port a distinct account, to be called the port fund account, showing, in such detail as the Local Government prescribes, the receipts and expenditure of the port, and shall publish annually as soon after the first day of April as may be practicable an abstract, in such form as that Government prescribes, of the account for the past financial year.

(3) If, for any of the purposes of this Act, an advance of money has been or shall be made by the Government on account of any port subject to this Act, simple interest upon that advance, or upon so much of it as remains or shall remain unrepaid, at such rate as the Governor General in Council may determine, shall be charged in the port fund account of the port.

(4) All money received under this Act at or on account of any port subject to this Act, excluding receipts on account of pilotage but including—

(a) fines,

(b) proceeds of waifs, and

(c) any balance of the proceeds of a sale under section 14 where no right to the balance has been established on a claim made within three years from the date of the sale,

shall be credited in the port fund account of the port.

(5) All expenses incurred for the sake of any such port, excluding expenses on account of pilotage but including—

(a) the pay and allowances of all persons upon the establishment of the port,

(b) the

*(Chapter V.—Port-dues, Fees and other Charges.)*

- (b) the cost of buoys, beacons, lights and all other works maintained chiefly for the benefit of vessels being in or entering or leaving the port or passing through the rivers or channels leading thereto,
- (c) pensions, allowances and gratuities of persons who have been employed in the port under this or any other enactment relating to ports and port-dues, or such portion of those pensions, allowances and gratuities as the Local Government may by rule determine,
- (d) with the previous sanction of the Local Government, contributions towards the support of public hospitals or dispensaries suitable for the reception or relief of seamen or otherwise towards the provision of sanitary superintendence and medical aid for the shipping in the port and for seamen, whether ashore or afloat, belonging to vessels in the port, and
- (e) with the like sanction, contributions towards sailors' homes, institutes, rest-houses and coffee-houses and for other purposes connected with the health, recreation and temporal well-being of sailors,

shall be charged to the port fund account of the port.

(6) Subject to the provisions of any local law as to the disposal of any balance from time to time standing to the credit of a port fund account, any such balance may be temporarily invested in such manner as the Local Government may direct.

Grouping  
of ports.

37. (1) The Local Government may direct that for the purposes of the last foregoing section any number of ports shall be regarded as constituting a single port, and thereupon all moneys to be credited to the port fund account under sub-section (4) of that section shall form a common port fund account which shall be available for the payment of all expenses incurred for the sake of any of the ports :

Provided

(Chapter V.—*Port-dues, Fees and other Charges.*)

Provided, with respect to the ports of Calcutta, Madras, Bombay, Rangoon, Karachi, Chittagong and Aden, that none of those ports may be grouped with any other port, and that the port fund account of each of those ports shall be kept separate from the port fund account of any other port.

(2) Where ports are grouped by or under this Act, the following consequences ensue, namely:—

- (a) the Local Government, in the exercise of its control over expenditure debitable to the common port fund account of the group, may, with the previous sanction of the Governor General in Council, make rules with respect to the expenditure of the fund for the sake of the several ports of the group on the objects authorized by this Act, and shall cause effect to be given to any directions which the Governor General in Council may deem it necessary to issue with respect to such expenditure; and
- (b) the Local Government may exercise its authority under section 34 as regards all the ports in the group collectively or as regards any of them separately.

38. The person to whom any dues, fees or other charges authorized to be taken by or under this Act are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the dues, fees or other charges are paid, and the name, tonnage and other proper description of the vessel in respect of which the payment is made. Receipts for  
port-charges.

39. (1) Within twenty-four hours after the arrival within the limits of any port subject to this Act of any vessel liable to the payment of port-dues under this Act, the master of the vessel shall report her arrival to the conservator of the port. Master to  
report arrival.

(2) A master failing without lawful excuse to make such report within the time aforesaid shall for every



*(Chapter V.—Port-dues, Fees and other Charges.)*

every such offence be punishable with fine which may extend to one hundred rupees.

(3) Nothing in this section applies to tug-steamers, ferry steamers or river steamers plying to and from any of the ports subject to this Act or to ballam boats plying to and from the port of Chittagong.

Conservator  
may in cer-  
tain cases as-  
certain  
draught and  
charge ex-  
pense to  
master.

40. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern posts thereof for denoting her draught, the conservator may cause the same to be ascertained by means of the operation of hooking, and the master of the vessel shall be liable to pay the expenses of the operation.

Ascertain-  
ment of ton-  
nage of vessel  
liable to port-  
dues.

41. In order to ascertain the tonnage of any vessel liable to pay port-dues the following rules shall be observed, namely :—

(1) (a) If the vessel is a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, or the Indian Registration of Ships Act (1841) Amendment Act, 1850, or under any other law for the time being in force for the registration of vessels in British India, the conservator may require the owner or master of the vessel or any person having possession of her register to produce the register for inspection.

(b) If the owner or master or such person neglects or refuses to produce the register or otherwise to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be ascertained, according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, and

in

*(Chapter V.—Port-dues, Fees and other Charges.)*

in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.

X of 1841.

II of 1850.

- (2) If the vessel is not a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, or the Indian Registration of Ships Act (1841) Amendment Act, 1850, or under any other law for the time being in force for the registration of vessels in British India, and the owner or master thereof fails to satisfy the conservator as to what is her true tonnage according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, the conservator shall cause the vessel to be measured and the tonnage thereof to be ascertained according to the mode aforesaid, and in such case the owner or master of the vessel shall be liable to pay the expenses of the measurement.

- (3) If the vessel is a vessel of which the tonnage cannot be ascertained according to the mode of measurement mentioned in clauses (1) and (2), the tonnage of the vessel shall be determined by the conservator on such an estimate as may seem to him to be just.

42. If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act, refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle, apparel and furniture belonging thereto or any part thereof, and detain the same until the amount due is paid ;

Distrain and sale on refusal to pay port-charges.

and in case any part of the port-dues, fees or other charges or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested

*(Chapter V.—Port-dues, Fees and other Charges.)*

arrested, remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, fees or other charges and the costs including the costs of sale remaining unpaid, and shall render the surplus, if any, to the master of the vessel upon demand.

No port-clearance to be granted until port-charges are paid.

43. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such clearance—

(a) until her owner or master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and other charges, and of all fines, penalties and expenses to which the vessel or her owner or master is liable under this Act ;

(b) until all expenses, which by the Merchant Shipping Act, 1894, section 207, are to be borne by her owner, incurred since her arrival in the port from which he seeks clearance, have been paid.

57 & 58  
Vict., c. 60.

Port-charges payable in one port recoverable at any other port.

44. (1) If the master of any vessel in respect of which any such sum as is mentioned in the last foregoing section is payable causes her to leave any port without having paid the sum, the authority appointed to receive port-dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port-dues, fees and other charges under this Act at any other port in British India to which she may proceed, or in which she may be, to levy the sum.

(2) The authority to whom the requisition is directed shall proceed to levy such sum in the manner prescribed in section 42, and a certificate purporting to be made by the authority appointed to receive port-dues, fees and other charges at the port where such sum as is mentioned in the last

foregoing

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foregoing section became payable, stating the amount payable, shall be sufficient *prima facie* proof of such amount in any proceeding under section 42 and also (in case the amount payable is disputed) in any subsequent proceeding under section 59.

45. (1) If the master of a vessel evades the payment of any such sum as is mentioned in section 43, he shall be punishable with fine which may extend to five times the amount of the sum. Penalty for evading payment of port-charges.

(2) In any proceeding before a Magistrate on a prosecution under sub-section (1), any such certificate as is mentioned in section 44, sub-section (2), stating that the master has evaded such payment, shall be sufficient *prima facie* proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

(3) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

46. A vessel entering any port subject to this Act (other than a port in Burma) in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Local Government and not exceeding three-fourths of the rate with which she would otherwise be chargeable. Port-due on vessels in ballast.

47. When a vessel enters a port subject to this Act, but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Local Government and not exceeding half the rate with which she would otherwise be chargeable. Port-due on vessels not discharging or taking in cargo.

48. No port-due shall be chargeable in respect of— Port-due not to be chargeable in certain cases.

(a) any pleasure-yacht, or

(b) any

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(b) any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage, or

(c) any vessel which, having entered any port within the territories administered by the Governor of Fort Saint George in Council, leaves it within forty-eight hours without discharging or taking in any passengers or cargo.

Power to  
impose  
hospital port-  
dues.

49. (1) The Local Government may, by notification in the local official Gazette, order that there shall be paid in respect of every vessel entering any port subject to this Act, within a reasonable distance of which there is a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Local Government thinks fit.

(2) Such port-dues shall be called hospital port-dues, and the Local Government shall, in making any order under sub-section (1), have regard to any contributions made under section 36, sub-section (5), clause (d).

(3) An order imposing or increasing hospital port-dues shall not take effect till the expiration of sixty days from the day on which the order was published in the local official Gazette.

(4) Whenever the Local Government is satisfied that proper provision has been made by the owners or agents of any class of vessels for giving medical aid to the seamen employed on board such class of vessels, or that such provision is unnecessary in the case of any class of vessels, it may, by notification in the local official Gazette, exempt such class of vessels from any payment under this section.

Application  
and account  
of hospital  
port-dues.

50. (1) Hospital port-dues shall be applied, as the Local Government may direct, to the support of any such hospital or dispensary as aforesaid, or otherwise for providing sanitary superintendence and medical aid

(Chapter V.—Port-dues, Fees and other Charges.  
Chapter VI.—Hoisting Signals.)

aid for the shipping in the port in which they are levied and for the seamen belonging to the vessels therein, whether such seamen are ashore or afloat.

(2) The Local Government shall publish annually in the local official Gazette, as soon after the first day of April as may be, an account, for the past financial year, of the sums received as hospital port-dues at each port where such dues are payable, and of the expenditure charged against those receipts.

(3) Such account shall be published as a supplement to the abstract published under section 36, sub-section (2).

## CHAPTER VI.

### HOISTING SIGNALS.

51. (1) The master of every inward or outward bound vessel, on arriving within signal distance of any signal-station established within the limits of the river Hooghly, or within the limits of any part of a river or channel leading to a port subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

Master to  
hoist number  
of vessel.

(2) If the master of a vessel arriving as aforesaid offends against sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

52. (1) Every pilot in charge of a vessel shall require the number of the vessel to be duly signalled as provided by the last foregoing section.

Pilot to  
require  
master to  
hoist number.

(2) When, on such requisition from the pilot, the master refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot may, on arrival

(Chapter VI.—*Hoisting Signals.* Chapter VII.—*Provisions with respect to Penalties.*)

arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has been complied with.

53. Any pilot in charge of a vessel who disobeys, or abets disobedience to, any of the provisions of this Chapter shall be punishable with fine which may extend to five hundred rupees for each instance of such disobedience or abetment, and, in addition, shall be liable to have his authority to act as a pilot withdrawn.

## CHAPTER VII.

### PROVISIONS WITH RESPECT TO PENALTIES.

Penalty for disobedience to rules and orders of the Local Government.

54. If any person disobeys any rule or order which a Local Government has made in pursuance of this Act and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punishable for every such offence with fine which may extend to one hundred rupees.

Offences how triable, and penalties how recovered.

55. All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the owner or master of any vessel, for any offence committed on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted, to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Costs of conviction.

56. (1) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

(2) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act.

57. (1) If

*(Chapter VII.—Provisions with respect to Penalties.)*

**57.** (1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

Ascertain-  
ment and re-  
covery of ex-  
penses and  
damages pay-  
able under  
this Act.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.

**58.** Whenever any fine, expenses or damages is or are levied under this Act, by distress and sale, the cost of the distress and sale may be levied in addition to such fine, expenses or damages, and in the same manner.

Cost of dis-  
tress.

**59.** If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied has been determined by a Magistrate, who, upon application made to him for that purpose, may determine the amount and award such costs to be paid by either of the parties to the other of them as he thinks reasonable, and payment of such cost, if not paid on demand, shall be enforced as if they were a fine.

Magistrate to  
determine the  
amount to be  
levied in case  
of dispute.

**60.** (1) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port.

Jurisdiction  
over offences  
beyond local  
limits of  
jurisdiction.

(2) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby

vested



(Chapter VII.—Provisions with respect to Penalties.

Chapter VIII.—Supplemental Provisions.)

vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

Conviction to  
be quashed on  
merits only.

61. (1) No conviction order or judgment of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state, on the face of the conviction, order or judgment, the evidence on which it proceeds.

(2) If no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in the depositions.

## CHAPTER VIII.

### SUPPLEMENTAL PROVISIONS.

62. (1) If any vessel belonging to any of His Majesty's subjects, or sailing under British colours, hoists, carries or wears, within the limits of any port subject to this Act, any flag, jack, pennant or colours, the use whereof on board such vessel has been prohibited by the Merchant Shipping Act, 1894, or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in pursuance of any such Statute, or by any of his Majesty's regulations in force for the time being, the master of the vessel shall, for every such offence, be punishable with fine which may extend to fifty rupees.

57 & 58  
Vict., c. 60.

(2) Such fine shall be in addition to any other penalty recoverable in respect of such an offence.

(3) The conservator of the port, or any officer of His Majesty's Navy or Indian Marine Service, may enter on board any such vessel and seize and take away any flag, jack, pennant or colours so unlawfully hoisted, carried or worn on board the same.

63. Any





*(Chapter VIII.—Supplemental Provisions.)*

57 & 58  
 Vict., c. 60.

63. Any Magistrate, upon an application being made to him by the Consul of any Foreign Power to which section 238 of the Merchant Shipping Act, 1894, has, by an Order in Council, been, or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any vessel of such Foreign Power, may, until a revocation of such Order in Council has been publicly notified, issue his warrant for the apprehension of any such deserter, and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs or, at the instance of the Consul, to be detained in custody until the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month : Foreign deserters.

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during the detention and that the detention of the deserter shall not be continued beyond twelve weeks.

64. (1) The provisions of sections 10 and 21 shall be applicable to all ports heretofore or hereafter declared by the Local Government to be ports for the shipment and landing of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject. Application of sections 10 and 21.

(2) Any penalties imposed by him, and any expenses incurred by his order, under the said provisions, shall be recoverable respectively in the manner provided in sections 55 and 57.

(3) In any of the said ports for the shipment and landing of goods the consent referred to in section 21, sub-section (4), may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the Local Government.

65. Any local authority in which any immoveable property in or near a port is vested may, with the previous sanction of the Local Government, appropriate Grant of sites for Sailors' institutes.

private

*(Chapter VIII.—Supplemental Provisions.)*

priate and either retain and apply, or transfer by way of gift or otherwise, the whole or any part of the property as a site for, or for use as, a sailors' home or other institution for the health, recreation and temporal well-being of sailors.

Exercise of powers of conservator by his assistants.

66. (1) All acts, orders, or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any harbour-master or any deputy or assistant of such conservator or harbour-master.

(2) Any person authorized by this Act to do any act may call to his aid such assistance as may be necessary.

Service of written notices of directions.

67. Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

Publication of orders of Local Government.

68. Every declaration, order and rule of a Local Government made in pursuance of this Act shall be published in the local official Gazette, and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

Repeal.

69. The enactments mentioned in the second schedule are hereby repealed to the extent specified in the fourth column of that schedule.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

### THE FIRST SCHEDULE.

PORTS, VESSELS CHARGEABLE, RATE OF PORT-DUES AND FREQUENCY OF PAYMENT.

(See sections 1 and 33.)

#### PART I.—BENGAL.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Calcutta . . .	Sea-going vessels of twenty tons and upwards.	Not exceeding four annas per ton: provided that in the case of <i>dhonis</i> and country vessels employed in the coasting trade, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in sixty days.
	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Cuttack Ports,—namely, False Point and Pooree.	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Whenever the vessel enters any one of the ports except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in sixty days.
Balasore Ports—namely, Balasore, Churaman, Laichhunpur, Chanua, Subarnarekha, Dhamra (Chandbally), and Sartha.	Ditto . . .	Ditto . . .	Whenever the vessel enters any one of the ports, except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in thirty days.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Madras . . .	Sea-going vessels of fifteen tons and upwards.	<p><i>Foreign vessels.</i></p> <p>(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements or Ceylon calling at Madras, not exceeding four annas a ton.</p> <p>(b) In the case of any other foreign ship or steamer calling at Madras, not exceeding four annas a ton.</p> <p><i>Coasting vessels.</i></p> <p>(c) In the case of a coasting ship calling at Madras, not exceeding one and a half annas a ton.</p> <p>(d) In the case of a coasting steamer calling at Madras, not exceeding three annas a ton.</p>	<p>The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again.</p> <p>The due is payable on each entry into the port.</p> <p>The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.</p> <p>The due is payable once in thirty days.</p>

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY—continued.

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.		
1		2	3	4		
Eastern Group.						
District.	Port.					
			Foreign Vessels.			
Ganjam.	1. Gopalpur . .	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.		
	2. Baruva . .					
	3. Calingapatam .					
Vizagapatam.	4. Bimlipatam .		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.		
	5. Vizagapatam .					
Godavari.	6. Cocanada . .		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.		
	7. Coringa . .					
Kistna.	8. Narasapur . .		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and half annas a ton.	The due is payable once for the voyage.		
	9. Perupalem . .					
	10. Masulipatam .					
Guntur.	11. Nagayalanka .		Coasting Vessels.			
	12. Kottapalem .					
	13. Moratata . .					
	14. Gangadipalem.					
	15. Nizampatnam.					
	16. Ipurupalem .					
	17. Motupalle . .					
	18. Kottapatnam .					
Nellore.	19. Isknaile . .		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.		
South Arcot. Chinglepat.	20. Covelong . .		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.		
	21. Cuddalore . .					
	22. Porto Novo . .					
	23. Thandavaraya-solaganpettai.					



(The First Schedule —Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY—continued.

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Eastern Group.—contd.</i>				
Dis-trict.	Port.			
<i>Foreign Vessels.</i>				
Tanjore.	24. Tirumalavasal	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	25. Tranquebar			
	26. Nagore		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	27. Negapatam			
	28. Velankani		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	29. Toppaturai			
	30. Point Calimere.		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	31. Mutupet			
	32. Adirampatnam			
	33. Gopalapatnam.			
	34. Kattumavedi.			
	35. Krishnaji-patnam.			
	36. Ammapatnam.			
	37. Kottai-patnam.			
	38. Sundarapandiya-petnam.			
	39. Vattanam			
	40. Tondi			
	41. Puduk-patnam.			
	42. Karangadu			
Madura.	43. Tirupalan-kudi.	Sea-going vessels of fifteen tons and upwards.	<i>Coasting Vessels.</i>	
	44. Devipatnam.		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	45. Mudiyan-patnam.			
	46. Alagayan-kolam.		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	47. Attankarai			
	48. Emanan-gundu.			
	49. Pamban			
	50. Bamesvaram			
	51. Mandapam			
	52. Vedalai			
	53. Muttupettai			
	54. Kilakarai			
	55. Ervadi			
	56. Valinokkam			

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY—continued.

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4	
<i>Eastern Group—concl.</i>				
District.	Port.		<i>Foreign Vessels.</i>	
Tinnevely.	{ 57. Vembar . . .	Sea-going vessels of fifteen tons and upwards.	(a) In the case of foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	{ 58. Vaippar . . .		(b) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	{ 59. Tuticorin . . .		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	{ 60. Ovary . . .		(d) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	{ 61. Kayalpatnam . . .		<i>Coasting Vessels.</i>	
	{ 62. Kulasekharapatnam . . .		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
Malabar.	<i>Western Group.</i>		(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	{ 63. Cochin . . .			
	{ 64. Chavakad . . .			
	{ 65. Velivanad . . .			
	{ 66. Ponani . . .			
	{ 67. Kutayi . . .			
	{ 68. Parappauna . . .			
	{ 69. Tanur . . .			
	{ 70. Parpanangadi . . .			
	{ 71. Ferokeh . . .			
	{ 72. Beypore . . .			
	{ 73. Calicut . . .			
	{ 74. Kappatta . . .			
	{ 75. Quilandi . . .			
	{ 76. Kottakkal . . .			
	{ 77. Badagara . . .			
	{ 78. Muttankal . . .			
	{ 79. Chompayi . . .			
	{ 80. Kallayi . . .			
	{ 81. Talayi . . .			
	{ 82. Tellicher . . .			
	{ 83. Cannanore . . .			
	{ 84. Pudiayangadi . . .			
	{ 85. Azhikal . . .			
	{ 86. Ettikulam . . .			
	{ 87. Kavvayi . . .			

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY—concluded.

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
Western Group.—contd.				
Dis- trict.	Port.		<i>Foreign Vessels.</i>	
South Canara.	{ 88. Hoadrug . } { 89. Baikal . } { 90. Kasaragod . } { 91. Kumbale . } { 92. Manjesvara . }	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	{ 93. Mangalore . } { 94. Mulki . } { 95. Padubidri . }		(b) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	{ 96. Ermala . } { 97. Uchhila . } { 98. Kaph . } { 99. Malpé . }		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days for liability to pay the due again at that or any other port in the group.
	100. Hangarakatta or Barkur.		(d) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and half annas a ton.	The due is payable once for the voyage.
	101. Coondapoor			
	{ 102. Nyakinkatte (Nayakkankottai) . } { 103. Baindur . } { 104. Siruru . }		<i>Coasting Vessels.</i>	
			(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
			(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.

*Explanations to Part II of the First Schedule.*

*Explanation 1*—In this part of the schedule—

(a) "ship" means a sailing vessel and "steamer" a steam-vessel;

(b) "coasting ship" or "coasting steamer" means respectively a ship or steamer which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port in the island of Ceylon or any part of India, between the westernmost part of Sind and the south-easternmost part of Burma; and "coasting steamer" includes a coasting steamer-vessel having a general pass under section 161 of the Sea Customs Act, 1878;

(c) "foreign ship" "foreign steamer" means respectively a ship or steamer not being a coasting ship or coasting steamer;

Provided that, for the purpose of the levy of port-dues, a vessel shall not be deemed, during one and the same voyage, to be both a coasting ship or steamer and a foreign ship or steamer, but port-dues shall, in respect of such voyage, be leviable on such vessel either as a coasting or as a foreign ship or steamer, whichever rate is the higher.

*Explanation 2*—Port enclosed in double brackets in the first column of the schedule shall be treated as if they were only one port; every vessel in respect of which such dues have been charged and taken at one of the bracketted ports being exempted from the payment of port dues on entering another port bracketted with it within the period specified in the fourth column of the schedule.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART III.—BOMBAY PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Bombay . . .	Sea-going vessels of ten tons and upwards (except fishing boats). Tug-steamers, ferry-steamers and river-steamers.	Not exceeding four annas per ton.  Ditto . . .	Once in the same month.  Once between the 1st January and the 30th June, and once between the 1st July and 31st December in each year.
<i>Northern Group of Ports—</i>			
1. Gopha . . .	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton ; provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port ; provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Dholerá ( <i>Whittle Bandar</i> ). . .			
3. Tankári . . .			
4. Dehegám . . .			
5. Kavi . . .			
6. Dehej . . .			
7. Broach . . .			
8. Bhagwá . . .			
9. Surat . . .			
10. Matwád . . .			
11. Balsár . . .			
12. Umarsádi . . .			
13. Kolak . . .			
14. Kalái . . .			
15. Maroli . . .			
16. Umbargam . . .			
17. Gholwad . . .			
18. Dábhánu Creek . . .			
19. Tárápur . . .			
20. Olivará Navápur . . .			
21. Sápáti Creek . . .			
22. Máhim (Kelva) . . .			
23. Kelva . . .			
24. Dantiora . . .			
25. Arnála . . .			

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART III—BOMBAY PRESIDENCY—continued.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
<i>Southern Group of Ports—</i>			
1. Bándra . . .	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton : provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs, and an addition of one-half of such highest rate.	Once in thirty days at the same port : provided that no coasting vessel or coasting steamer, having paid port-dues at any ports, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Vesáva . . .			
3. Manori . . .			
4. Utan . . .			
5. Bassein . . .			
6. Bahiwadi . . .			
7. Kalyan . . .			
8. Thána . . .			
9. Mahul . . .			
10. Trombay . . .			
11. Panwel . . .			
12. Mora . . .			
13. Katanjá . . .			
14. Thal . . .			
15. Alibág . . .			
16. Revdandá . . .			
17. Mandad . . .			
18. Rankot . . .			
19. Kelshi . . .			
20. Harnai . . .			
21. Dabhoi . . .			
22. Borya . . .			
23. Jaygad . . .			
24. Varavdá . . .			
25. Ratnagiri . . .			
26. Purangad . . .			
27. Jaytapur . . .			
28. Vijaydurg . . .			
29. Devgad . . .			
30. Achra . . .			
31. Málwan . . .			
32. Nivti . . .			
33. Vengurla . . .			
34. Redi . . .			
35. Kirnapani . . .			
36. Tilmati . . .			
37. Sadashivgad . . .			
38. Karwár, including Baitkhol . . .			
39. Bingi . . .			
40. Chendya . . .			
41. Belikeri . . .			
42. Ankolá . . .			
43. Gangavali . . .			

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART III.—BOMBAY PRESIDENCY—concluded.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often charges in respect of same vessel.
1	2	3	4
<i>Southern Group of Ports—concluded.</i>			
44. Tadri . . .	} Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs, and an addition of one half of such highest rate.	Once in thirty days at the same port: provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
45. Kumptá . . .			
46. Honáwar . . .			
47. Manki . . .			
48. Murdeshwar . . .			
49. Shiráli . . .			
50. Bhatkal . . .			
Karachi . . .	Sea-going vessels of ten tons and upwards (except fishing boats). Tug-steamers and river-steamers.	Not exceeding four annas per ton.  Ditto	Once in three months.  Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Aden . . .	Sea-going vessels of ten tons and upwards.	Not exceeding three annas per ton.	Once a month.

PART IV.—BURMA.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Rangoon . . .	Sea-going vessel of ten tons and upwards.	Not exceeding six annas per ton.	Once in sixty days.

*(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)*

PART IV—BURMA—concluded.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Rangoon— <i>contd.</i>	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Moulmein . . .	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Ditto . . .	Once in sixty days.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pies per ton.	Ditto.
Kyaukpyn . . .	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Ditto.
Akyab . . .	Ditto . . .	Ditto . . .	Ditto.
Bassein . . .	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Ditto . . .	Ditto.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pies per ton.	Ditto.
Tavoy . . .	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Ditto.
Mergui . . .	Ditto . . .	Ditto . . .	Ditto.

(*The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment. The Second Schedule.—Enactments repealed.*)

PART V.—EASTERN BENGAL AND ASSAM.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Chittagong	Sea-going vessels of ten tons and upwards, not being ballam-boats.	Not exceeding four and a half annas per ton.	Whenever the vessel enters the port, except in the case of mail steamers and coasting vessels, which shall not be chargeable more than once in sixty days.
	Tug-steamers and river-steamers.	Ditto	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
	Ballam-boats	Not exceeding one anna per ton.	Whenever the vessel enters the port.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

(See section 69.)

Year.	No.	Short title or subject.	Extent of repeal.
1889 . .	X	The Indian Ports Act, 1889 . .	So much as is unrepealed.
1891 . .	V	The Indian Ports Act, 1891 . .	The whole.
1894 . .	II	The Indian Ports Act (1889) Amendment Act, 1894.	Ditto.
1896 . .	IV	The Indian Ports Act (1889) Amendment Act, 1896.	Ditto.
1901 . .	III	The Indian Ports Act, 1901 . .	Ditto.
1903 . .	V	The Indian Ports (Amendment) Act, 1903.	Ditto.



# THE INDIAN REGISTRATION ACT, 1908 (XVI OF 1908).

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## ACT No. XVI OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 18th  
December 1908.*)

An Act to consolidate the enactments relating  
to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents ;  
It is hereby enacted as follows :—

### PART I.

#### PRELIMINARY.

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Indian Registration Act, 1908.

(2) It extends to the whole of British India, except such districts or tracts of country as the Local Government may, with the previous sanction of the Governor General in Council, exclude from its operation.

(3) It shall come into force on the first day of January 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “addition ” means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native of India, his caste (if any) and his father’s name, or where he is usually described as the son of his mother, then his mother’s name :

(2) “book ” includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

(3) “district ” and “sub-district ” respectively mean a district and sub-district formed under this Act :

(4) “District

*(Part II.—Of the Registration-establishment.)*

- (4) "District Court" includes the High Court in its ordinary original civil jurisdiction :
- (5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :
- (6) "immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass :
- (7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease :
- (8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority :
- (9) "moveable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property : and
- (10) "representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

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## PART II.

### OF THE REGISTRATION-ESTABLISHMENT.

3. (1) The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government :

Inspector  
General of  
Registration.

Provided



*(Part II.—Of the Registration-establishment.)*

Provided that the Local Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government appoints in this behalf.

(2) Any Inspector General may hold simultaneously any other office under Government.

Branch In-  
spector  
General of  
Sindh.

4. (1) The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred.

(2) The Branch Inspector General of Sindh may hold simultaneously any other office under Government.

Districts  
and sub-dis-  
tricts.

5. (1) For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

Registrars  
and Sub-  
Registrars.

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

Offices of  
Registrar  
and Sub-  
Registrars.

7. (1) The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices

to

*(Part II.—Of the Registration-establishment.)*

to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The Local Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. (1) The Local Government may also appoint officers, to be called Inspectors of Registration-offices, and may prescribe the duties of such officers.

Inspectors of  
Registration-  
offices.

(2) Every such Inspector shall be subordinate to the Inspector General.

9. Every military cantonment may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and the Cantonment Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Military  
cantonments  
may be  
declared sub-  
districts or  
districts.

10. (1) When any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Absence of  
Registrar or  
vacancy in  
his office.

(2) When the Registrar of a district including a Presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General appoints in

this

*(Part II.—Of the Registration-establishment.)*

this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Registrar on duty in his district.

11. When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

Absence of Sub-Registrar or vacancy in his office.

12. When any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Report of certain appointments and suspension and removal and dismissal of officers.

13. (1) All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General.

(2) Such report shall be either special or general, as the Local Government directs.

(3) The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Remuneration and establishments of registering officers.

14. (1) Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

(2) The Local Government may allow proper establishments for the several offices under this Act.

Seal of Registering officers.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs :—“The seal of the Registrar (or of the Sub-Registrar) of                   .”

Register books and fire-proof boxes.

16. (1) The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

(2) The

*(Part III.—Of Registrable Documents.)*

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

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### PART III.

#### OF REGISTRABLE DOCUMENTS.

17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

IX of 1866.  
VIII of 1871.  
II of 1877.

Documents of  
which registra-  
tion is  
compulsory.

- (a) instruments of gift of immoveable property ;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property ;
- (c) non-testamentary instruments which acknowledge the receipt or payment of

any

*(Part III.—Of Registrable Documents.)*

any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

- (d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the local official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

- (i) any composition-deed : or
- (ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property ; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ;  
or

(iv) any

*(Part III.—Of Registrable Documents.)*

- (iv) any endorsement upon or transfer of any debenture issued by any such Company; or
- (v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) any decree or order of a Court and any award; or
- (vii) any grant of immoveable property by Government; or
- (viii) any instrument of partition made by a Revenue-officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
- (x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-officer.

XXVI of  
1871.  
XIX of  
1883.

XII of 1884.

*(Part III.—Of Registrable Documents.)*

(3) Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

Documents  
of which  
registration  
is optional.

18. Any of the following documents may be registered under this Act, namely :—

- (a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property ;
- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ;
- (c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 ;
- (d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property ;
- (e) wills ; and
- (f) all other documents not required by section 17 to be registered.

Documents  
in language  
not under-  
stood by  
registering  
officer.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents  
containing  
interlinea-  
tions, blanks,  
erasures or  
alterations.

20. (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or altera-

tion

*(Part III.—Of Registrable Documents.)*

tion appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

Description  
of property  
and maps or  
plans.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

22. (1) Where it is, in the opinion of the Local Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

Description  
of houses  
and land by  
reference to  
Government  
maps or  
surveys.

(2) Save



*(Part IV.—Of the Time of Presentation.)*

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

## PART IV.

## OF THE TIME OF PRESENTATION.

Time for  
presenting  
documents.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

Documents  
executed by  
several  
persons at  
different  
times.

Provision  
where delay  
in presenta-  
tion is  
unavoidable.

24. Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

25. (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward

(Part IV.—Of the Time of Presentation. Part V.  
—Of the Place of Registration.)

forward it to the Registrar to whom he is subordinate.

26. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

Documents  
executed out  
of British  
India.

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

Wills may be  
presented or  
deposited at  
any time.

## PART V.

### OF THE PLACE OF REGISTRATION.

28. Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clause (a), (b), (c) and (d), and section 18, clauses (a), (b) and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Place for  
registering  
documents  
relating to  
land.

29. (1) Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

Place for  
registering  
other docu-  
ments.

(2) A

(Part V.—Of the Place of Registration. Part VI.—Of Presenting Documents for Registration.)

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

Registration  
by Registrars  
in certain  
cases.

30. (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(2) The Registrar of a district including a Presidency-town and the Registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

Registration  
or acceptance  
for deposit at  
private re-  
sidence.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit :

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

## PART VI.

### OF PRESENTING DOCUMENTS FOR REGISTRATION.

Persons to  
present docu-  
ments for  
registration.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree

(Part VI.—Of Presenting Documents for Registration.)

decree or order, claiming under the decree or order, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely :—

Power-of-attorney  
recognizable  
for purposes  
of section 32.

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides ;

(b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate ;

(c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of His Majesty or of the Government of India :

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely :—

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;

(ii) persons

(Part VI.—Of Presenting Documents for Registration.)

(ii) persons who are in jail under civil or criminal process ; and

(iii) persons exempt by law from personal appearance in Court.

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Enquiry  
before regis-  
tration by  
registering  
officer.

34. (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances

(Part VI.—Of Presenting Documents for Registration.)

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and,

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

35. (1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

Procedure on admission and denial of execution respectively.

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are

the

(Part VII.—Of Enforcing the Appearance of Executants and Witnesses.)

the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead :

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII.

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## PART VII.

### OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

Procedure where appearance of executant or witness is desired.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.

Officer or Court to issue and cause service of summons.

37. The officer or Court, upon receipt of the person's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

38. (1)

(Part VII.—Of Enforcing the Appearance of Executants and Witnesses. Part VIII.—Of Presenting Wills and Authorities to adopt.)

38. (1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

Persons exempt from appearance at registration-office.

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration-office,

shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act.

Law as to summonses, commissions and witnesses

## PART VIII.

### OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. (1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

Persons entitled to present wills and authorities to adopt.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. (1)



(*Part VIII.—Of Presenting Wills and Authorities to adopt. Part IX.—Of the Deposit of Wills.*)

Registration  
of wills and  
authorities  
to adopt.

41. (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

- (a) that the will or authority was executed by the testator or donor, as the case may be ;
- (b) that the testator or donor is dead ; and
- (c) that the person presenting the will or authority is, under section 40, entitled to present the same.

## PART IX.

### OF THE DEPOSIT OF WILLS.

Deposit of  
wills.

42. Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

Procedure on  
deposit of  
wills.

43. (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. If

(Part IX.—Of the Deposit of Wills. Part X.—Of the Effects of Registration and Non-Registration.)

44. If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorized agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

Withdrawal of sealed cover deposited under section 42.

45. (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

Proceedings on death of depositor.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

46. (1) Nothing hereinbefore contained shall affect the provisions of section 259 of the Indian Succession Act, 1865, or of section 81 of the Probate and Administration Act, 1881, or the power of any Court by order to compel the production of any will.

Saving of certain enactments and powers of Courts.

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

## PART X.

### OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Time from which registered document operates.

48. All

(Part X.—Of the Effects of Registration and Non-Registration.)

Registered documents relating to property when to take effect against oral agreements.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered.

49. No document required by section 17 to be registered shall—

- (a) affect any immoveable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered.

Certain registered documents relating to land to take effect against unregistered documents.

50. (1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

*Explanation.*—In cases where Act No. XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act,

and

(Part XI.—Of the Duties and Powers of Registering Officers.)

and, where the document is executed after the first day of July 1871, not registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act.

VIII of  
1871.  
III of 1877.

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PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A) *As to the Register-books and indexes.*

51. (1) The following books shall be kept in the several offices hereinafter named, namely :—

Registers  
books to be  
kept in the  
several  
offices.

A—In all registration offices—

Book 1, “Register of non-testamentary documents relating to immoveable property”;

Book 2, “Record of reasons for refusal to register”;

Book 3, “Register of wills and authorities to adopt”; and

Book 4, “Miscellaneous Register”;

B—In the offices of Registrars—

Book 5, “Register of deposits of wills.”

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immoveable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18 which do not relate to immoveable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of  
the

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

the Registrar has been amalgamated with the office of a Sub-Registrar.

Duties of  
registering  
officers when  
document  
presented.

52. (1) (a) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it ;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same ; and,

(c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General.

Entries to be  
numbered  
consecutively.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Current  
indexes and  
entries there-  
in.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books ; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Indexes to be  
made by  
registering  
officers, and  
their con-  
tents.

55. (1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III and Index No. IV.

(2) Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

(3) Index

(Part XI.—Of the Duties and Powers of Registering Officers.)

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector General from time to time directs.

56. (1) Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I, II and III.

Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar and filed.

(2) Every Registrar receiving such copy shall file it in his office.

57. (1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after

the

(Part XI.—Of the Duties and Powers of Registering Officers.)

the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B) *As to the Procedure on admitting to Registration.*

Particulars  
to be endorsed  
on documents  
admitted to  
registration.

58. (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:—

- (a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;
- (b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
- (c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of  
receipt

(Part XI.—Of the Duties and Powers of Registering Officers.)

receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Endorsements to be dated and signed by registering officer.

60. (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Certificate of registration.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

Endorsements and certificate to be copied and document returned.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. (1)



(Part XI.—Of the Duties and Powers of Registering Officers.)

Procedure on presenting document in language unknown to registering officer.

62. (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office.

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

Power to administer oaths and record of substance of statements.

63. (1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

(2) Every such officer may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) *Special Duties of Sub-Registrar.*

Procedure where document relates to land in several sub-districts.

64. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-

Registrar

(Part XI.—Of the Duties and Powers of Registering Officers.)

Registrar shall file the memorandum in his Book No. 1.

65. (1) Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

Procedure where document relates to land in several districts.

(2) The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate: and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D) *Special Duties of Registrar.*

66. (1) On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

Procedure after registration of documents relating to land.

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Procedure  
after registration under  
section 30,  
sub-section  
(2).

67. On any document being registered under section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub-section (1).

*(E) Of the controlling Powers of Registrars and Inspectors General.*

Power of  
Registrar to  
superintend  
and control  
Sub-Registrars.

68. (1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

Power of  
Inspector  
General to  
superintend  
registration  
offices and  
make rule.

69. (1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

(a) providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept;

(b) declaring what languages shall be deemed to be commonly used in each district;

(c) declaring

(Part XI.—Of the Duties and Powers of Registering Officers. Part XII.—Of Refusal to Register.)

- (c) declaring what territorial divisions shall be recognized under section 21;
- (d) regulating the amount of fines imposed under sections 25 and 34, respectively;
- (e) regulating the exercise of the discretion reposed in the registering officer by section 63;
- (f) regulating the form in which registering officers are to make memoranda of documents;
- (g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;
- (h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively;
- (i) declaring the holidays that shall be observed in the registration-offices; and,
- (j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(3) The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette, and on publication shall have effect as if enacted in this Act.

70. The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee.

Power of  
Inspector  
General to  
remit fines.

## PART XII.

### OF REFUSAL TO REGISTER.

71. (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which

Reasons for  
refusal to  
register to be  
recorded.

*(Part XII.—Of Refusal to Register.)*

which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.

72. (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.

73. (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar

*(Part XII.—Of Refusal to Register.)*

is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of complaints.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—

Procedure of Registrar on such application.

- (a) whether the document has been executed ;
- (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

Order by Registrar to register and procedure thereon.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of

any

## (Part XII—Of Refusal to Register.)

any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

V of 1908.

Order of  
refusal by  
Registrar.

## 76. (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

Suit in case  
of order of  
refusal by  
Registrar.

77. (1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

(*Part XIII.—Of the Fees for Registration, Searches and Copies. Part XIV.—Of Penalties.*)

### PART XIII.

#### OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

78. Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees payable—

Fees to be fixed by Local Government.

- (a) for the registration of documents ;
- (b) for searching the registers ;
- (c) for making or granting copies of reasons, entries or documents, before, on or after registration ;

and of extra or additional fees payable—

- (d) for every registration under section 30 ;
- (e) for the issue of commissions ;
- (f) for filing translations ;
- (g) for attending at private residences ;
- (h) for the safe custody and return of documents ; and
- (i) for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

79. A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration office.

Publication of fees.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

Fees payable on presentation.

### PART XIV.

#### OF PENALTIES.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes

Penalty for incorrectly endorsing, copying,



*(Part XIV.—Of Penalties.)*

translating  
or register-  
ing docu-  
ments with  
intent to  
injure.

purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term XIV of  
1860, which may extend to seven years, or with fine, or with both.

Penalty for  
making false  
statements,  
delivering  
false copies  
or transla-  
tions, false  
personation,  
and abet-  
ment.

**82. Whoever—**

- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or
- (b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or
- (c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or
- (d) abets anything made punishable by this Act;

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Registering  
officer may  
commence  
prosecutions.

**83. (1)** A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the

Branch

(Part XIV.—Of Penalties. Part XV.—Miscellaneous.)

Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Registering officers to be deemed public servants.

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Indian Penal Code, the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

## PART XV.

### MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed.

Destruction of unclaimed documents.

86. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

Registering officer not liable for thing done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Nothing so done invalidated by defect in appointment or procedure.

88. (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee or Official Assignee, or for the Sheriff,

Registration of documents executed by Government officers or certain public functionaries.

Receiver

*(Part XV.—Miscellaneous.)*

Receiver or Registrar of a High Court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

Copies of certain orders, certificates and instruments to be sent to registering officers and filed.

89. (1) Every officer granting a loan under the Land Improvement Loans Act, 1883, shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No. 1. XIX of 1883

(2) Every Court granting a certificate of sale of immoveable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1. V of 1908.

(3) Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1. XII of 188

(4) Every

*(Part XV.—Miscellaneous.)*

(4) Every Revenue-officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

*Exemptions from Act.*

III of 1877. VIII of 1871. 90. (1) Nothing contained in this Act or in the Indian Registration Act, 1877, or in the Indian Registration Act, 1871, or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely :—

Exemption of certain documents executed by or in favour of Government.

- (a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement ; or
- (b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey ; or
- (c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records ; or
- (d) sanads, inam title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land ; or
- (e) notices given under section 74 or section 76 of the Bombay Land-Revenue Code, 1879, of relinquishment of occupancy by

*(Part XV.—Miscellaneous.)*

by occupants, or of alienated land by holders of such land.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection  
and copies  
of such  
documents.

91. Subject to such rules and the previous payment of such fees as the Local Government prescribes in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c) and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Burmese  
registration  
rules con-  
firmed.

92. All rules relating to registration enforced in Lower Burma prior to the commencement of the Indian Registration Act, 1877, shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

III of 1877

*Repeals.*

Repeals.

93. (1) The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof.

(2) Nothing herein contained shall be deemed to affect any provision of any enactment in force in any part of British India and not hereby expressly repealed.

*(The Schedule.—Repeal of Enactments.)*

## THE SCHEDULE.

## REPEAL OF ENACTMENTS.

*(See section 93.)*

Year.	No.	Short title.	Extent of repeal.
1877	III	The Indian Registration Act, 1877.	The whole.
1879	XII	The Registration and Limitation Acts Amendment Act, 1879.	So much as is unrepealed.
1883	XIX	The Land Improvement Loans Act, 1883.	So much of section 12 as is unrepealed.
1886	VII	The Indian Registration Act, 1886.	The whole.
1888	VII	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed.
1891	XII	The Amending Act, 1891.	In the second schedule the entries relating to Act III of 1877.
1899	XVII	The Indian Registration (Amendment) Act, 1899.	The whole.

# THE INDIAN EMIGRATION ACT, 1908 (XVII OF 1908).

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## CHAPTER XV.

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THE FIRST SCHEDULE.—COUNTRIES TO WHICH EMIGRATION IS LAWFUL.

THE SECOND SCHEDULE.—FORM OF RECRUITER'S LICENSE.

THE THIRD SCHEDULE.—PROBABLE LENGTHS OF VOYAGES  
BY SAILING VESSELS UNDER  
THIS ACT.

THE FOURTH SCHEDULE.—ENACTMENTS REPEALED.

## ACT No. XVII OF 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 18th  
December 1908.*)

An Act to consolidate the enactments relating  
to the Emigration of Natives of India.

WHEREAS it is expedient to consolidate the enactments relating to the emigration of Natives of India and their departure by sea out of India for certain purposes ; It is hereby enacted as follows :—

### CHAPTER I.

#### PRELIMINARY.

Short title  
and extent.

1. (1) This Act may be called the Indian Emigration Act, 1908 ; and

(2) It extends to the whole of British India.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(i) “dependent” means any of the following persons accompanying any emigrant, namely :—

(a) any woman who has not entered into an agreement to emigrate under this Act ;

(b) any child in whose name and on whose behalf any such agreement has not been entered into ; and

(c) any aged or incapacitated relative or friend :

(ii) “emigrant” means any Native of India who emigrates, or has emigrated, within the meaning of clause (iv), or who has been registered under this Act as an emigrant, and includes any dependent of an emigrant :

(iii) “emigrant-vessel”

*(Chapter I.—Preliminary.)*

(iii) "emigrant-vessel" means a vessel the master of which is licensed under this Act to carry emigrants therein :

(iv) "emigrate" and "emigration" denote the departure by sea out of British India of a Native of India under an agreement to labour for hire in some country beyond the limits of India other than the island of Ceylon or the Straits Settlements :

(v) "labour" means unskilled labour and does not include any work or other occupation of the nature hereinafter referred to in Chapter XI :

(vi) "Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a District Magistrate or a Sub-divisional Magistrate, and includes also any person appointed by the Local Government to perform in any area the functions of a Magistrate under this Act :

(vii) "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a vessel :

(viii) "recruiter" includes a head recruiter or other person who collects or receives emigrants recruited by other persons :

(ix) "Registering Officer" means any person appointed by the Local Government to perform in any area the functions of a Registering Officer under this Act : and

(x) "vessel" includes anything made for the conveyance by water of human beings or property.

(2) In case of any doubt or dispute as to whether any person should be deemed—

(a) to emigrate, or

(b) to be a Native of India,

within the meaning of this Act, the question shall be determined by such person and in such manner as the Governor General in Council may, by rules made under this Act, direct, and such determination shall be final.

## CHAPTER II.

(Chapter II.—Ports from which, and Countries to which, Emigration is lawful.)

## CHAPTER II.

### PORTS FROM WHICH, AND COUNTRIES TO WHICH, EMIGRATION IS LAWFUL.

Ports from  
which emi-  
gration is  
lawful.

3. (1) Emigration shall not be lawful except from the ports of Calcutta, Madras, Bombay and Karachi, and from such other ports as the Governor General in Council, by notification in the Gazette of India, declares to be ports from which emigration is lawful.

(2) The Local Government may, by notification in the local official Gazette, fix for the purposes of this Act the limits of any port from which emigration is lawful.

Countries to  
which emi-  
gration is  
lawful.

4. (1) Emigration shall not be lawful except to the countries specified in the first schedule and to such other countries as the Governor General in Council, by notification in the Gazette of India, declares to be countries to which emigration is lawful.

(2) Every notification under this section must contain a declaration that the Governor General in Council has been duly certified that the Government of the country to which the notification refers has made such laws and other provisions as the Governor General in Council thinks sufficient for the protection of emigrants to that country during their residence therein.

5. (1) Where the Governor General in Council has reason to believe that any of the grounds, herein-after mentioned, for prohibiting emigration to any country to which emigration is lawful, exists, he may by notification in the Gazette of India, declare that emigration to that country shall cease to be lawful from a day specified in the notification; and from that day emigration to that country shall accordingly cease to be lawful.

(2) The

(Chapter II.—*Ports from which, and Countries to which, Emigration is lawful.*)

(2) The grounds referred to in sub-section (1) are—

- (a) that the plague or any other epidemic disease dangerous to human life has broken out in the country ;
- (b) that the mortality among emigrants in the country is excessive ;
- (c) that proper measures have not been taken for the protection of emigrants immediately on their arrival in the country or during their residence therein ;
- (d) that the agreements made with emigrants as such before their departure from India are not duly enforced by the Government of the country ; and
- (e) that the Governor General in Council having either directly or through the Secretary of State for India in Council, addressed the Government of the country with a view to obtain information regarding the condition or treatment of emigrants therein, has not within a reasonable time received the information asked for.

6. (1) Where the Local Government has reason to believe that, in any country to which emigration is lawful, the plague or other epidemic disease dangerous to human life has broken out, and that emigrants, if allowed to emigrate to that country, would be exposed to serious risk of life on arrival there, it may, by notification in the local official Gazette, declare that emigration to that country from any port in the territories administered by it shall cease to be lawful pending a reference to the Governor General in Council.

Power for Local Government to suspend emigration pending reference to Governor General in Council.

(2) The Local Government shall at once report the publication of a notification under this section,

with



(Chapter II.—Ports from which, and Countries to which, Emigration is lawful. Chapter III.—Emigration Agents.)

with the reasons for it, to the Governor General in Council, who shall thereupon publish a notification in the Gazette of India confirming or cancelling the notification published by the Local Government.

Revocation  
of prohibi-  
tion.

7. Where the Governor General in Council is satisfied that the ground on which a notification has been published by him under either of the two last foregoing sections with respect to any country has ceased to exist, he may, by notification in the Gazette of India, declare that emigration to that country shall again be lawful from a day to be specified in the notification.

Power for  
Local Gov-  
ernment  
to prohibit  
emigration  
to specified  
country  
from the  
whole or  
any specified  
part of its  
territories.  
Saving for  
acts done  
before  
publication  
of notifica-  
tion.

8. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, prohibit, from a day specified in the notification, all Natives of India or any specified class of such Natives from emigrating from the whole or any specified part of the territories under its administration to any specified country.

9. The publication of a notification under any of the four last foregoing sections shall not affect any act done, offence committed or proceedings commenced before the publication.

## CHAPTER III.

### EMIGRATION AGENTS.

Appoint-  
ment of  
Emigration  
Agents.

10. (1) The Government of every country to which emigration is lawful may, from time to time, appoint a person to be Emigration Agent in any port from which emigration is lawful.

(2) An appointment under this section shall not take effect until the Local Government, by notifica-  
tion

(Chapter III.—*Emigration Agents.* Chapter IV.—*Protectors of Emigrants and Medical Inspectors.*)

tion in the local official Gazette, has declared its approval of the appointment.

11. The remuneration to be given to an Emigration Agent shall not depend on, or be regulated by, the number of emigrants sent by him, but shall be in the nature of a fixed salary :

Remuneration of Agents.

Provided that the Governor General in Council may authorize the payment to specified Emigration Agents of special fees for occasional work.

## CHAPTER IV.

### PROTECTORS OF EMIGRANTS AND MEDICAL INSPECTORS.

12. (1) The Local Government may appoint a proper person to be the Protector of Emigrants for any port within the territories administered by it from which emigration is lawful.

Appointment of Protectors of Emigrants.

(2) The Governor General in Council may define the area to which the authority of any Protector of Emigrants so appointed shall extend.

(3) Every Protector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

13. Every Protector of Emigrants, in addition to the special duties assigned to him by this Act or the rules made under this Act, shall—

General duties of Protector.

- (a) protect and aid with his advice all emigrants ;
- (b) cause, so far as he can, all the provisions of this Act and of the rules made under this Act to be complied with ;
- (c) inspect, on arrival, all vessels bringing return emigrants to the port for which he is Protector ;

(d) enquire

(Chapter IV.—Protectors of Emigrants and Medical Inspectors. Chapter V.—Recruiters.)

(d) enquire into the treatment received by the return emigrants both during the period of their service in the country to which they emigrated, and also during the return voyage, and report thereon to the Local Government; and

(e) aid and advise the return emigrants so far as he reasonably can.

Appointment  
of Medical  
Inspector.

14. (1) The Local Government may appoint one or more Medical Inspectors of Emigrants at each port from which emigration is lawful and may apportion their respective duties.

(2) Every Medical Inspector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

XIV of  
1860.

Protector and  
Medical In-  
spector to  
have faci-  
lities for  
inspection.

15. Every Emigration Agent and all persons in charge of, or employed in, any depôt established under this Act, or in charge of, or employed in, any emigrant-vessel, shall give the Protector of Emigrants and the Medical Inspector of Emigrants every facility for making such inspections, examinations and surveys as are required by this Act or by the rules made under this Act, or as those officers may deem necessary or proper, and shall afford them all such information as they may reasonably require.

## CHAPTER V.

### RECRUITERS.

Protector of  
Emigrants  
to license  
recruiters.

16. (1) The Protector of Emigrants at each of the ports from which emigration is lawful shall, on the application of the Emigration Agent for any country to which emigration is lawful, grant licenses to so many fit persons as to the Protector seems necessary to be recruiters of emigrants within the area to which the authority of the Protector extends.

(2) A person

## (Chapter V.—Recruiters.)

(2) A person shall not, unless he holds a license granted under this Chapter,—

- (a) enter into, or attempt to enter into, any agreement with any person purporting to bind him to emigrate, or
- (b) in consideration of any hire or reward, induce or attempt to induce any person to leave any place for the purpose of emigrating, or
- (c) act or be employed in any other respect as a recruiter of emigrants.

(3) Every recruiter shall produce his license when called upon to do so by any Magistrate or officer in charge of a police-station.

17. Every license granted under this Chapter shall specify the particular country for which, and the area within which, the holder is licensed to recruit, and may be in the form set forth in the second schedule.

Form of  
license.

18. (1) A license granted under this Chapter shall not be in force for a longer period than one year from the day on which it comes into force.

Duration of  
license.

(2) The Protector of Emigrants may, on the ground of misconduct, cancel any license granted by him under this Chapter before the expiration of the period for which it is in force.

19. (1) A recruiter shall not, in any place beyond the limits of a port from which emigration is lawful, enter or attempt to enter into any agreement with any person purporting to bind him to emigrate, to induce or assist, or attempt to induce or assist, any person to leave any place for the purpose of emigrating, or act or be employed in any other respect as a recruiter of emigrants, unless his license bears the countersignature of the District Magistrate.

Countersig-  
nature of  
license.

(2) If a District Magistrate has satisfied himself, after such enquiry as he thinks necessary, that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, he may refuse to countersign a recruiter's license.

(3) If

*(Chapter V.—Recruiters.)*

(3) If a District Magistrate has satisfied himself, after such enquiry as aforesaid, that sufficient and proper accommodation has not been provided in a suitable place, or is not available, for such intending emigrants or emigrants as may be collected by the recruiter pending their registration or removal to the depôt at the port of embarkation, he may refuse to countersign a recruiter's license or to decide whether he will countersign his license until after the expiration of such time as may in his opinion be reasonable.

(4) Before a Magistrate refuses to countersign, or defers his countersignature of, a recruiter's license, he shall record in writing his reasons for so doing.

Power for  
Magistrate  
to cancel  
countersignature in  
certain cases.

20. If any Magistrate, having countersigned a recruiter's license, afterwards finds reason to think that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, or that the accommodation provided for intending emigrants or emigrants collected by him has become unsuitable or has ceased to be available, he may require the licensee to produce his license, and may cancel the countersignature on it, or may impound the license and send it for cancellation to the Protector of Emigrants who granted it.

Notice to  
Protector of  
Emigrants of  
countersignature, refusal  
to countersign or  
cancellation  
of countersignature.  
Recruiter to  
be supplied  
with statement  
of terms of  
agreement he  
is authorized  
to offer.

21. When a Magistrate countersigns, or refuses to countersign, a recruiter's license, or cancels the countersignature on it, he shall at once report the countersignature, or the refusal or cancellation, and the grounds of the refusal or cancellation, to the Protector of Emigrants who granted the license.

22. (1) The Emigration Agent on whose application any recruiter is licensed shall supply the recruiter with a written or printed statement, signed by the Agent, and countersigned by the Protector of Emigrants, of the terms of agreement which the recruiter is authorized to offer on behalf of the Agent to intending emigrants.

(2) The

(Chapter V.—Recruiters. Chapter VI.—Registration of Emigrants and Execution of Agreements to emigrate.)

(2) The statement shall be both in English and in the vernacular language or languages of the local area within which the recruiter is licensed to recruit.

(3) The recruiter shall give a true copy of the statement to every person whom he invites to emigrate, and shall produce the statement for the information of any Magistrate or officer in charge of a police-station, when called upon to do so by the Magistrate or officer.

23. (1) Every recruiter shall provide sufficient and proper accommodation in a suitable place for such intending emigrants or emigrants as may be collected by him pending their registration or removal to the port of embarkation.

Accommodation to be provided by recruiters.

(2) The place where the accommodation is provided shall have a board fixed in some conspicuous position specifying the purpose for which the place is used.

(3) Every District Magistrate, and any subordinate Magistrate, or officer of Police authorized in this behalf by a rule made under this Act, shall have, for the supervision and regulation of the places where accommodation is provided under this section, the same powers as are by this Act conferred on a Protector of Emigrants in respect of depôts at the port of embarkation.

(4) All recruiters or other persons in charge of these places shall afford every Magistrate and any officer of Police authorized as aforesaid in this behalf every facility for visiting and inspecting them.

## CHAPTER VI.

### REGISTRATION OF EMIGRANTS AND EXECUTION OF AGREEMENTS TO EMIGRATE.

24. The Local Government may appoint any person to perform in a specified area, but subject to

Power for Local Government to

(Chapter VI.—Registration of Emigrants and Execution of Agreements to emigrate.)

appoint  
Registering  
Officers.

to the control of the District Magistrate or such other officer as the Local Government appoints in this behalf, the functions of a Registering Officer under this Act.

Execution of  
agreements.

25. Every agreement to emigrate entered into by any person must,—

- (a) if executed within the limits of any port from which emigration is lawful, be executed in the presence of the Protector ;
- (b) if executed elsewhere, be executed in the presence of a Registering Officer.

Appearance  
of intending  
emigrants  
before Regis-  
tering  
Officer.

26. Every recruiter who desires to engage any person to emigrate shall appear before a Registering Officer or the Protector of Emigrants (as the case may be) with that person, and with any persons intending to accompany that person as his dependents.

Examination  
and  
Registration  
of emigrant.

27. (1) The Registering Officer or Protector shall thereupon examine the person, apart from the recruiter, with reference to his intended agreement.

(2) If on such examination it appears,—

- (a) that such person is competent and willing to enter into the agreement and understands its nature,
- (b) that he has not been induced to enter into it by any coercion, undue influence, fraud, misrepresentation or mistake, and
- (c) that its terms are in conformity with law and are such as, according to the statement furnished to the recruiter under section 22, he was authorized to offer,

the Registering Officer or Protector shall, subject to the provisions of section 29, register in a book to be kept for the purpose, in such form as the Governor

General

(Chapter VI.—Registration of Emigrants and Execution of Agreements to emigrate.)

General in Council, by rules made under this Act, prescribes,—

- (i) the name, sex, name of the father, caste, occupation and age of the intending emigrant,
- (ii) the name of the village or place of which he is a resident, and
- (iii) such other particulars (if any) concerning him and his dependents (if any) as the Governor General in Council, by rules made under this Act, prescribes.

28. (1) Notwithstanding anything contained in the last foregoing section, the Registering Officer or Protector may refuse to register any married woman under that section if he finds that her husband does not consent to her emigrating.

Power to refuse registration in cases of married women.

(2) The Registering Officer or Protector may also, in the case of any woman whom he believes to be married, refuse to decide whether he will register her until after the expiration of such time, not exceeding ten days, as he thinks fit.

29. (1) When any person appears before a Registering Officer or Protector under section 26 as a dependent of an intending emigrant, the Registering Officer or Protector shall, if the person is able to give intelligent answers to questions, examine him, apart from the recruiter, as to his dependence on the intending emigrant whom he is about to accompany, and as to his willingness to emigrate.

Examination of dependent.

(2) Where the Registering Officer or Protector sees reason to doubt the existence of the dependence or willingness, he may, if he thinks fit, refuse to register the intending emigrant, unless the name of the dependent is omitted from the register.

30. Where the Registering Officer or Protector refuses to register any intending emigrant, he shall record his reasons for the refusal.

Record of reasons for refusal to register.

31. (1) Where



(Chapter VI.—Registration of Emigrants and Execution of Agreements to emigrate.)

Execution  
and attesta-  
tion of agree-  
ment.

31. (1) Where the particulars concerning any intending emigrant and his dependents (if any) have been registered, the Registering Officer or Protector shall cause an agreement to be prepared in duplicate and shall call on the recruiter and the intending emigrant to execute the agreement in duplicate in his presence, and, if they execute it, shall attest the execution with his signature.

(2) An agreement to emigrate shall not be of any effect until the particulars concerning the intending emigrant and his dependents (if any) have been registered, and the agreement has been executed and attested under this Act.

(3) When the particulars concerning any intending emigrant and his dependents (if any) have been registered and an agreement has been executed and attested under this Act, the intending emigrant shall be deemed to be registered under this Act as an emigrant.

(4) Any number of intending emigrants appearing with the same recruiter before the Registering Officer or Protector at the same time, and desiring to emigrate on the same terms to the same country, may, with the permission of the Registering Officer or Protector (as the case may be), execute one instrument of agreement under this section, instead of each of such intending emigrants executing a separate instrument.

Contents of  
agreement.

32. Every agreement to emigrate shall contain a copy of the particulars registered concerning the intending emigrant and his dependents (if any) under section 27, and on the reverse such particulars concerning the nature, duration and term of service and the remuneration of the emigrant, and such other matters (if any) as the Governor General in Council, by rules made under this Act, prescribes.

Record of  
registrations  
and agree-  
ments.

33. When the agreement has been executed and attested,—

(a) one of the copies thereof shall be delivered to the emigrant, and the other shall be retained by

(Chapter VI.—Registration of Emigrants and Execution of Agreements to emigrate. Chapter VII.—Emigration Depôts.)

by the Protector or sent by the Registering Officer to him ; and

- (b) a certified copy of the particulars registered under section 27, concerning the emigrant or emigrants by whom the agreement was executed, and concerning his or their dependents (if any), shall be delivered to the recruiter for transmission to the Emigration Agent.

34. For the preparation of every agreement under this Chapter the recruiter or Emigration Agent shall pay such fee as the Governor General in Council, by notification in the Gazette of India, prescribes :

Fee for preparation of agreement.

Provided that the Governor General in Council may at any time, by like notification, declare that the fee payable under this section shall be consolidated, either generally or in any specified area, with the fee payable under section 68.

IX of 1872.

35. Notwithstanding anything to the contrary in the Indian Contract Act, 1872, it shall be lawful for any person of the age of sixteen years or upwards to enter in manner in this Act provided into an agreement to emigrate to any place to which emigration is lawful.

Power to make agreement if over sixteen.

36. Any person entering into an agreement to emigrate, and being the parent or guardian of a child under the age of sixteen years and above the age of ten years, may, in the name of and on behalf of the child, enter into an agreement in manner in this Act provided binding the child to emigrate with him.

Power to make agreement on behalf of child or ward.

## CHAPTER VII.

### EMIGRATION DEPÔTS.

37. Every Emigration Agent shall establish at the port for which he is appointed a suitable depôt for the reception

Depôts to be established

*(Chapter VII.—Emigration Dépôts.)*

at ports of  
embarkation.

reception and lodging of emigrants before embarkation for the country for which he is Emigration Agent, and shall provide all necessary food and clothing for all emigrants during their stay at the dépôt.

Licensing of  
dépôts.

38. (1) A dépôt established under the last foregoing section shall not be used for the reception and lodging of emigrants until it has been inspected and approved by the Protector of Emigrants and the Medical Inspector of Emigrants, and a license for its use has been granted by the Protector.

(2) A license under this section shall not be granted for a longer period than one year from the day on which it comes into force.

(3) The Protector of Emigrants may at any time cancel a license under this section—

(a) if he considers that the dépôt for which it was granted is unhealthy, or has in any respect become unsuitable for the purpose for which it was established; or

(b) if the Emigration Agent fails, after reasonable notice, to comply with any of the requirements of this Act or of the rules made under this Act.

Inspection by  
Protector and  
Medical In-  
spector.

39. The Protector of Emigrants and the Medical Inspector shall from time to time, and at least once in every week during which any emigrants may be kept in any dépôt at the port for which they are Protector and Medical Inspector, respectively, inspect the emigrants in that dépôt and examine the state of the dépôt and the manner in which the emigrants therein are lodged, fed, clothed and otherwise provided for and attended to.

Report by  
Medical In-  
spector.

40. The Medical Inspector shall report to the Protector of Emigrants any circumstance that may come to his knowledge showing that any dépôt is not suitable for its purpose, or that the emigrants lodged therein are treated with any oppression or neglect.

41. (1) The

(Chapter VII.—*Emigration Depôts. Chapter VIII.*  
—*Conveyance of Emigrants to Depôts and Pro-*  
*cedure on Arrival.*)

41. (1) The Medical Inspector may, if he thinks fit, direct that any emigrant suffering from any disease likely to be dangerous to his neighbours shall be isolated or excluded from the depôt.

Treatment of  
emigrant  
suffering  
from disease.

(2) The Medical Inspector may, if he thinks fit, order the removal of any emigrant so suffering to a proper hospital for treatment at the expense of the Emigration Agent; and the expense (if any) incurred by the Protector of Emigrants in respect of the removal of the emigrant and his treatment in the hospital shall be recoverable from the Emigration Agent by the Protector of Emigrants, with interest thereon at the rate of six per centum per annum from the date on which the expense was incurred.

## CHAPTER VIII.

### CONVEYANCE OF EMIGRANTS TO DEPÔTS AND PRO- CEDURE ON ARRIVAL.

42. A recruiter shall not remove or attempt to remove any intending emigrant to a depôt, or induce or attempt to induce him to go to a depôt, or to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned, or aid him in going to a depôt, or in leaving any such local limits, until the intending emigrant has been registered under this Act as an emigrant.

Emigrant  
not to be  
removed  
before regis-  
tration.

43. (1) Every emigrant must, after he has been registered under this Act, be conveyed with all convenient despatch, by or under the orders of the recruiter or Emigration Agent, to the depôt established at the port of embarkation by the Emigration Agent on whose application the recruiter has been licensed.

Conveyance  
of emigrant  
to depôt.

(2) When an emigrant has been registered at a place beyond the limits of the port of embarkation, he must, while proceeding to the depôt, be accom-  
panied

*(Chapter VIII.—Conveyance of Emigrants to Depôts  
and Procedure on Arrival.)*

panied throughout the journey either by the recruiter himself, or by a competent person appointed by him with the approval of a Magistrate.

(3) The Magistrate shall give to the person so appointed a certificate signed by him stating that he has been appointed for the journey to the depôt.

(4) The recruiter or the person so appointed shall, throughout the journey, provide the emigrant with proper and sufficient food and lodging.

Report of  
arrival at  
depôt.

44. The arrival at a depôt of each emigrant must immediately be reported by the person in charge of the depôt to the Emigration Agent and by the Agent to the Protector of Emigrants.

Examination  
by Medical  
Inspector.

45. (1) The copy of the particulars registered under section 27, received by the recruiter from the Registering Officer or Protector, must, as soon as conveniently may be after the arrival of the emigrant at the depôt, be shown by the Emigration Agent to the Medical Inspector of Emigrants.

(2) The Medical Inspector shall examine each emigrant whose name is entered in the said copy to ascertain whether he is fit, having regard to his age and state of health, to undertake the journey to the country to which he has agreed to emigrate.

(3) The Medical Inspector, if satisfied of his fitness, shall give a certificate to that effect to the Emigration Agent. If not so satisfied, he shall give a certificate to that effect to the Protector of Emigrants.

Power for  
Protector to  
order pay-  
ment of  
expenses of  
return of  
emigrant in  
certain cases.

46. (1) In any of the following cases, namely:—

(a) if the Medical Inspector of Emigrants finds that an emigrant is, or has become, unfit to undertake the journey to the country to which he has agreed to emigrate, and if the Protector of Emigrants considers that the emigrant has not dishonestly represented himself as fit to undertake the journey, or

(b) if

(Chapter VIII.—Conveyance of Emigrants to Depôts and Procedure on Arrival.)

(b) if the Protector finds that any such irregularity has occurred in the recruitment or treatment by the recruiter of any emigrant as makes it just to rescind the agreement to emigrate, or

(c) if the Emigration Agent refuses to fulfil the agreement entered into with the emigrant, the Protector may order the Emigration Agent to pay to the emigrant such sum as the Protector deems reasonable as compensation, and, when the emigrant has been registered at a place beyond the limits of the port of embarkation, such reasonable sum as is necessary to enable him to return to the place at which he was registered, and may take any steps which he thinks necessary for the conveyance of the emigrant to that place.

(2) Any emigrant who has been registered at any place beyond the limits of the port of embarkation, and who from his state of health is, in the opinion of the Medical Inspector of Emigrants, unfit to undertake at once the return journey to the place at which he was registered, shall be entitled to be fed, lodged, clothed and attended to at the depôt at the expense of the Emigration Agent until he is reported by the Medical Inspector fit to undertake the return journey.

47. (1) Where any order is made under the last foregoing section with reference to any emigrant who was registered at any place beyond the limits of the port of embarkation—

Payment of expenses of dependents and relatives.

(a) any emigrant who has been registered as his dependent, or

(b) any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of the emigrant,

shall be entitled—

(i) to be conveyed at the expense of the Emigration Agent with the emigrant to the place at which he was registered, and

(ii) if

(Chapter VIII.—Conveyance of Emigrants to Depôts and Procedure on Arrival.)

- (ii) if the emigrant is unable to travel, to be lodged, fed and clothed in the depôt at the expense of the Emigration Agent until the emigrant is able to travel.

(2) The Protector of Emigrants may include any expenses incurred under this section in an order made under the last foregoing section with respect to the emigrant.

Compensation to emigrant for ill-treatment on journey.

48. If it appears that during the journey to the depôt any emigrant has suffered any ill-treatment, or that, in the case of any emigrant who has been registered at a place beyond the limits of the port of embarkation, the provisions of section 43 have not been complied with, the Protector of Emigrants may order the Emigration Agent to pay—

- (a) to the emigrant a reasonable sum by way of compensation, and  
 (b) to the Protector the expenses (if any) which may have been incurred by or under the orders of the Protector on behalf of the emigrant by reason of the neglect to comply with the provisions of section 43.

Power for Protector to pay and recover expenses incurred on behalf of emigrant.

49. (1) On failure of the Emigration Agent for twenty-four hours to comply with an order of the Protector for the payment of any sum to an emigrant under any of the last three foregoing sections, the Protector may pay the same to the emigrant.

(2) Every sum paid by the Protector to an emigrant under sub-section (1), and, on failure of the Emigration Agent for twenty-four hours to comply with an order for payment thereof under the last foregoing section, every sum which the Protector may have ordered the Emigration Agent to pay to him under that section, shall be recoverable from the Emigration Agent with interest thereon at the rate of six per centum per annum from the date of payment.

(3) Further

(Chapter VIII.—Conveyance of Emigrants to Depôts and Procedure on Arrival. Chapter IX.—Emigrant-vessels.)

(3) Further proof shall not be required by any Court in any such case than that the Protector gave the Emigration Agent an order to pay the sum, and that the Emigration Agent for twenty-four hours failed to comply with the order.

## CHAPTER IX.

### EMIGRANT-VESSELS.

50. An emigrant shall not be received on board any vessel unless a license to carry emigrants in the vessel has been obtained from the Local Government.

Master of emigrant-vessel to be licensed.

51. (1) When the master or owner of any vessel desires to obtain a license to carry emigrants in his vessel, he shall apply in writing through the Protector of Emigrants to the Local Government for the license.

Application for license.

(2) The application must state the number of emigrants which, according to the rules as to space contained in this Chapter, the applicant deems the vessel capable of carrying, and the tonnage and such other particulars respecting the vessel as the Governor General in Council, by rules made under this Act, prescribes.

52. (1) The Protector of Emigrants shall cause the vessel to be surveyed by a competent person at the cost of the master or owner, with a view to ascertain her seaworthiness, and the extent and nature of her accommodation for emigrants, and to ascertain that she is properly ventilated, and is supplied with all the tackle, apparel and furniture requisite for her intended voyage :

Survey and licensing of vessel.

Provided that, if the vessel is a steamship having a certificate of survey granted by the Board of Trade or any British Colonial Government or under the

Indian



(Chapter IX.—*Emigrant-vessels.*)

Indian Steamships Act, 1884, and in force and applicable to her intended voyage, the survey under this sub-section with a view to ascertain her seaworthiness shall not extend to her hull or machinery unless the Protector of Emigrants has reason to believe that, since the grant of the certificate, her hull or machinery has sustained injury or damage or has otherwise become inefficient. VII of 1884.

(2) If the Local Government is of opinion that the vessel is in all respects suitable for the carrying of emigrants under this Act, and is properly manned and officered, it shall give to the master of the vessel a license to carry emigrants therein specifying the number of emigrants which may be received on board.

Accommodation required on board emigrant-vessel.

53. (1) A license shall not be granted under the last foregoing section unless—

- (a) there is provided for the emigrants, either between decks or, subject to the approval of the Protector of Emigrants and the Medical Inspector, in cabins on the upper deck, a space devoted to the exclusive use of the emigrants having in every part a height of not less than six feet;
- (b) a separate place is fitted up for a hospital; and
- (c) such arrangements are made for the separation of women (married or single) and children from the other emigrants as the Governor General in Council, by rules made under this Act, prescribes.

(2) The cabins on the upper deck provided under clause (a) of this section must be firmly secured and entirely covered in.

Rules as to space on board emigrant-vessel.

54. Every emigrant vessel shall contain within the space referred to in clause (a) of the last foregoing section at least twelve superficial feet and seventy-two cubic feet of space for each emigrant:

Provided

*(Chapter IX.—Emigrant-vessels.)*

Provided that two emigrants under the age of ten years shall for the purposes of this section count as one only.

55. There shall be on board every emigrant-vessel at the time of departure of the vessel from the port at which they embark, provisions, clothing, fuel and water for the emigrants (over and above the supply for the master, officers and crew, and of the cabin and other passengers, if any), in such quantity and of such description and quality as the Governor General in Council, by rules made under this Act, prescribes.

Provisions,  
clothing, fuel  
and water.

56. Every emigrant-vessel shall, at the time of departure of the vessel from the port at which the emigrants embark, have on board, and shall carry with her, a properly qualified surgeon, and also such compounders, interpreters and attendants subordinate to the surgeon, and such medicines and other stores, in such quantity and of such quality as the Governor General in Council, by rules made under this Act, prescribes.

Surgeons,  
attendants,  
medicines  
and stores.

57. The Protector of Emigrants and the Medical Inspector of Emigrants shall see personally that all the provisions of the last two foregoing sections are complied with.

Duty of Pro-  
tector and  
Medical In-  
spector with  
respect to  
enforcement  
of foregoing  
sections.

58. (1) Every master licensed under this Act shall, on the requisition of the Protector of Emigrants, and before any emigrant embarks on board his vessel, execute to the Protector in duplicate, a bond, in such form as the Local Government prescribes, binding himself and the owner of the vessel in a penal sum of ten thousand rupees, to perform the duties imposed by this Act or any rule made under this Act on a master and owner, respectively.

Bond to be  
executed by  
master of  
emigrant-  
vessel

(2) The Protector of Emigrants shall forward one copy of the bond to such officer as may be appointed in this behalf by the Government of the country to which the emigrants are to be conveyed, or, in

the

*(Chapter X.—Embarkation and Departure.)*

the case of a foreign colony, to the British Consular Agent, and the other copy to the Local Government.

## CHAPTER X.

## EMBARKATION AND DEPARTURE.

Time of embarkation after arrival.

59. An emigrant shall not embark, except with permission of the Protector of Emigrants, until seven days have elapsed from the date of his arrival at the depôt.

Time at which emigrant-vessels may leave India.

60. (1) An emigrant-vessel shall not sail from any port in British India—

(a) to any country west of the Cape of Good Hope, except at such seasons as the Governor General in Council, by rules made under this Act, prescribes as seasons during which it shall be lawful for emigrant-vessels generally, or of a class to which the vessel belongs, to sail to that country;

(b) to any country during any season which the Governor General in Council, by notification in the Gazette of India, declares to be a season during which the sailing of emigrant-vessels to that country is prohibited.

Procedure if emigrant refuses to embark.

61. If any emigrant without sufficient cause refuses or neglects to embark when called on by the Emigration Agent to do so, it shall not be lawful to compel the emigrant to embark :

Provided that nothing in this section shall affect the civil or criminal liabilities which an emigrant incurs by reason or in respect of any such refusal or neglect.

List of, and passes for, emigrants.

62. (1) When any emigrants are about to embark on board any vessel, the Emigration Agent shall supply the master of the vessel with four copies of a list, specifying, as accurately as may be, the names,

*(Chapter X.—Embarkation and Departure.)*

ages and occupations of the emigrants, and the names of their respective fathers.

(2) The master shall not receive any emigrant on board unless he is provided with a pass, signed by the Emigration Agent, and countersigned by the Protector, stating the name and age of the emigrant, the name of his father, and the country to which he has agreed to emigrate, and certifying that he is in a fit state of health to undertake the voyage to that country.

(3) Every emigrant shall on embarkation deliver the pass to the master.

(4) The master shall compare the emigrants who embark and the passes delivered by them with the list supplied by the Emigration Agent; and, if the list appears to be correct and to correspond with the passes delivered and with the emigrants embarked, the master shall sign the four copies of the list.

(5) The master shall not permit any emigrant to remain on board who has not delivered up his pass to the master or is not mentioned in the list.

63. (1) When the copies of the list have been signed, the master shall give two of the copies to the Protector of Emigrants, who shall sign them if he believes them to be correct.

Disposal of the two copies of list to be given by master to Protector.

(2) The Protector shall send one of the copies so signed by him by the vessel which carries the emigrants to such officer as may be appointed in this behalf by the Government of the country to which the emigrants have agreed to emigrate, or, in the case of a foreign colony, to the British Consular Agent, and shall file the other copy in his own office.

64. (1) The master shall give to the Emigration Agent the two remaining copies of the list.

Disposal of the two copies of list to be given by master to Emigration Agent.

(2) The Emigration Agent shall thereupon sign the copies, and shall return one of them to the master.

(3) The

*(Chapter X.—Embarkation and Departure.)*

(3) The master shall, on the arrival of the vessel at the country to which the emigrants have agreed to emigrate; and before their disembarkation, deliver the copy so returned to him to such officer as may be appointed in this behalf by the Government of the country, or, in the case of a foreign colony, to the British Consular Agent.

Examination  
of emigrants  
by Medical  
Inspector.

65. (1) The Medical Inspector shall be present at the embarkation of all emigrants, and shall examine each emigrant to ascertain if he is in a fit state of health to undertake the voyage to the country to which he has agreed to emigrate; and, if he finds that he is not fit to undertake the voyage, he shall inform the Protector accordingly.

(2) The Protector may thereupon refuse to permit the emigrant to embark; and any emigrant, registered as a dependent of an emigrant whom the Protector has refused to permit to embark, or any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of the emigrant, may, notwithstanding anything in this Act, refuse to embark.

(3) The provisions of sections 46, 47 and 49 shall apply to emigrants who under this section are not permitted to embark, and to any emigrants who under this section refuse to embark, and to the recovery of expenses incurred under this Act in respect of them.

Certificates  
from Protec-  
tor of Emi-  
grants and  
Emigration  
Agent.

66. Before any emigrant-vessel clears out of any port, the master of the vessel shall obtain from the Protector of Emigrants at the port and from the Emigration Agent for the country to which the emigrants are to be conveyed, certificates signed by the Protector and Emigration Agent, respectively, to the effect that the Protector and Agent have, in respect of all the emigrants embarking at that port in the vessel, done all that is required by the foregoing provisions of this Act, or by the rules made under this Act, to be done on the part of the Protector and Agent, respectively, and that all the directions for the security, well-

*(Chapter X.—Embarkation and Departure.)*

well-being and protection of emigrants which are contained in this Act or in the rules made under this Act have, in the case of that vessel, been complied with.

67. The master of every emigrant-vessel shall keep on board the vessel during the whole voyage two copies of this Act, and of all rules made under this Act, and two copies of a translation of this Act, and of those rules, in such language or languages as the Local Government directs, and shall, on request made at any reasonable time, produce one of those copies to any emigrant for his perusal.

Copies of Act and rules to be kept on board.

68. For each emigrant who embarks on board an emigrant-vessel the Emigration Agent shall pay to the Protector of Emigrants a fee of such amount as the Governor General in Council, by notification in the Gazette of India, prescribes :

Fee for each embarked emigrant.

Provided as follows :—

(a) the fee payable under this section shall not be more than is, in the opinion of the Governor General in Council, sufficient to raise the total income from fees under this Act to an amount which will cover the cost of any establishment or supervision which the Governor General in Council thinks necessary to provide for the control of emigration ;

(b) if it appears to the Governor General in Council expedient to provide, in the case of any country, any special establishment or expenditure for the protection of Indian emigrants to that country, the Governor General in Council may increase the fee payable in the case of emigrants to that country to an amount sufficient, in his opinion, to cover the cost of the special establishment or expenditure.

69. Every master licensed under this Act shall see that all the provisions of this Act and the rules made

Master to see to observance of Act

## (Chapter X.—Embarkation and Departure.)

and rules on board his vessel.

made under this Act are observed on board his vessel during the voyage from British India to the country to which the emigrants are to be conveyed.

Return of pass to emigrant.

70. The master shall return his pass to each emigrant before he disembarks in the country to which he has agreed to emigrate.

*Special Provisions as to Vessels sailing from Calcutta.*

Emigrant-vessel sailing from Calcutta to depart within twenty-four hours of embarkation.

71. The master of every vessel carrying emigrants from the port of Calcutta shall proceed on his voyage and depart with his vessel from Garden Reach within twenty-four hours after the embarkation of such of the emigrants as have first embarked.

Emigrant-vessel sailing from Calcutta to be towed to sea.

72. Every sailing-vessel leaving the port of Calcutta with emigrants shall proceed from Garden Reach to sea under tow of a steamer declared to be competent by such officer as the Local Government appoints in this behalf.

Power of surgeon of emigrant-vessel leaving Calcutta to require sick emigrants to be sent to hospital.

73. (1) Where an emigrant-vessel leaves the port of Calcutta, if during her passage down the river, and while between Garden Reach and Diamond Harbour, the disease of measles, scarlet-fever or small-pox appears on board, the master shall, if so required by the surgeon in charge of the emigrants, send to the hospital at Diamond Harbour all emigrants suffering from the disease, with any emigrants registered as their dependents and any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of any such emigrant and who wishes to accompany him or her, and shall at once inform the Protector of Emigrants at Calcutta of the number and names of the emigrants so sent to hospital.

(2) The provisions of sections 46, 47 and 49 shall, so far as may be, apply to emigrants landed under this section, and to the recovery of expenses incurred in respect of them.

74. (1) In

(Chapter X.—*Embarkation and Departure. Chapter XI.—Departure of Natives of India by Sea out of India for certain purposes.*)

74. (1) In the event of cholera in an epidemic form appearing among the emigrants on board any such vessel carrying emigrants from the port of Calcutta, the surgeon in charge of the emigrants may require the master to land all the emigrants on board the vessel at Diamond Harbour.

Power of surgeon of emigrant-vessel leaving Calcutta to require all emigrants to be landed when cholera appears.

(2) The master shall at once comply with the request of the surgeon, and shall immediately give notice of his having done so to the Protector of Emigrants at Calcutta, who shall take such action thereon as the Governor General in Council, by rules made under this Act, prescribes.

## CHAPTER XI.

### DEPARTURE OF NATIVES OF INDIA BY SEA OUT OF INDIA FOR CERTAIN PURPOSES.

75. (1) Whoever desires to engage any Native of India to depart by sea out of India for the purpose—

Application for permission to engage Natives of India to depart abroad for certain purposes.

- (a) of working as an artisan, or
- (b) of any exhibition or entertainment, or
- (c) of service in any restaurant, tea-house or other place of public resort, or,
- (d) save as provided in sub-section (2), of domestic service,

in any place beyond the limits of India other than the Island of Ceylon or the Straits Settlements, shall apply for the permission of the Local Government having jurisdiction at the port from which such person is to depart, and shall state in his application—

- (i) the number of the persons whom he proposes so to engage;

- (ii) the



*(Chapter XI.—Departure of Natives of India by Sea out of India for certain purposes.)*

- (ii) the place or places beyond the limits of India to which such persons and their dependents are to proceed;
  - (iii) the accommodation to be provided for such persons and their dependents until their departure out of India and during the voyage;
  - (iv) the provision to be made for the health and well-being of such persons and their dependents during the period of the proposed engagement, and for their repatriation at the end of such period;
  - (v) the terms of the agreements under which such persons are to be engaged; and
  - (vi) the security in British India which he proposes to furnish for the due observance of such agreements and for the proper treatment of the persons to be engaged and their dependents.
- (2) Nothing in sub-section (1) shall be deemed to apply to any person who in good faith—
- (a) engages a Native of India to accompany him out of India as his personal domestic servant, or
  - (b) engages in compliance with the request of some other person, not being in India, a Native of India to depart out of India for the purpose of becoming the personal domestic servant of such other person.

*Explanation.*—For the purposes of this Chapter—

- (i) the word “port” shall mean a port from which emigration is lawful or any port which the Governor General in Council, by notification in the Gazette of India, notifies in this behalf; and

(ii) the

(Chapter VI.—*Departure of Natives of India by Sea out of India for certain purposes.*)

- (ii) the words “emigrant” and “emigrate” in the definition of “dependent” in section 2, sub-section (1), clause (i), shall be read as referring to the departure by sea out of India of a person whom it is desired to engage under this Chapter.

76. On receiving an application under section 75 the Local Government may, after such enquiry as may be necessary, grant the permission applied for on such terms and conditions (if any) and on payment of such fees (if any) as it thinks fit, or withhold such permission, and the decision of the Local Government shall be final.

Applications how to be disposed of.

77. (1) Before any Native of India departs from India in accordance with permission granted under section 76, the person by whom he has been engaged shall appear before the Protector of Emigrants at the port of embarkation with such Native of India and with any persons intending to accompany him as his dependents.

Appearance of engaged persons before, and registration of names by, Protector of Emigrants.

(2) If it appears to the Protector of Emigrants—

- (a) that permission to engage such Native of India has been duly obtained,
- (b) that the terms of the agreement under which such Native of India has been engaged are in accordance with the terms of the permission granted, and
- (c) that the conditions on which such permission was granted have been complied with,

he shall register in a book to be kept for the purpose such particulars concerning such Native of India and his dependents (if any) and concerning the person engaging him in such form as the Governor General in Council, by rules made under this Act, prescribes.

78. Where

(Chapter XI.—Departure of Natives of India by Sea out of India for certain purposes. Chapter XII.—Rules.)

Provisions as to security.

78. Where such security as is referred to in section 75, sub-section (1), sub-clause (vi), has been furnished, the Local Government may, after such inquiry as may be necessary, pass orders in regard to the forfeiture of the security and the application of the same or of any part thereof, or may order the return of the security or of any part thereof to the person by whom it was furnished, or to his representative.

Delegation to Protector of Emigrants of authority to receive or dispose of applications.

79. The Local Government may, by notification in the local official Gazette, authorize a Protector of Emigrants to receive or dispose of applications made under this Chapter :

Provided that an appeal shall lie to the Local Government from every order passed by a Protector of Emigrants in exercise of the authority so conferred.

Application of Chapter to ports from which emigration is not lawful.

80. For the purposes of the application of this Chapter at any port notified under clause (i) of the explanation to section 75—

- (a) such port shall be deemed to be a port from which emigration is lawful, and
- (b) such officer as the Local Government may appoint in this behalf shall be deemed to be the Protector of Emigrants.

## CHAPTER XII.

### RULES.

Power for Governor General in Council to make rules.

81. (1) The Governor General in Council may by notification in the Gazette of India, make rule consistent with this Act—

- (a) to prescribe the person by whom any doubt or dispute referred to in sub-section (2) of section

*(Chapter XII.—Rules.)*

section 2 shall be determined and the procedure to be followed and the proof to be required in such cases ;

- (b) to provide for the supervision and regulation of places of accommodation provided under this Act, and to define the classes of Magistrates and the officers of Police to be authorized to visit and inspect those places ;
- (c) to prescribe the form of the register required under this Act, and the particulars to be entered therein, and to regulate the control to be exercised over Registering Officers by the District Magistrate or officer (if any) appointed in this behalf under this Act ;
- (d) to prescribe the forms of the agreements to be made under this Act, and the particulars to be contained therein, and the language or languages in which agreements must be expressed ;
- (e) to prescribe the conditions on which licenses for the establishment of depôts under this Act may be given, to provide for the supervision and regulation of depôts, and for the medical care of the emigrants during their residence there, and the measures to be taken on the outbreak of any epidemic or infectious disease there ;
- (f) to prescribe the forms to be supplied by Emigration Agents and recruiters for the purposes of this Act ;
- (g) to prescribe the particulars which the owner or master of a vessel applying for a license to carry emigrants in his vessel must state ;
- (h) to regulate the proportion of women to be ordinarily carried in any emigrant-vessel  
with

*(Chapter XII.—Rules.)*

with male emigrants, and to prescribe the arrangements to be made for the separation of women (married or single) and children from the other emigrants on board an emigrant-vessel ;

- (i) to prescribe the description, quantity and quality of provisions, fuel and water to be taken by emigrant-vessels, the daily allowance of food and water to be issued, and the nature and amount of clothing to be supplied to each emigrant during the voyage ;
- (j) to fix the number of the compounders, interpreters and attendants subordinate to the surgeon to be carried for the care of the sick or weakly on board each emigrant-vessel ;
- (k) to prescribe the nature, quantity and quality of medicines and other stores to be carried on board emigrant-vessels ;
- (l) to provide for the ventilation and cleanliness of every emigrant-vessel during a voyage, and for its being furnished with a sufficient number of life-buoys, boats, water-buckets and other appliances to be used in case of shipwreck or fire ;
- (m) to prescribe the seasons at which alone emigrant-vessels or specified classes of emigrant-vessels may sail from any port in British India to any country west of the Cape of Good Hope to which emigration is for the time being lawful ;
- (n) to provide for the disposal of emigrants who may be landed under section 74 ;
- (o) to provide for the medical care of the emigrants on the voyage, and to provide for the measures to be taken on the outbreak of any epidemic or infectious disease on a voyage ;

(p) to

(Chapter XII.—Rules. Chapter XIII.—Offences.)

- (p) to provide for a journal being kept by the surgeon of every emigrant-vessel, recording the health of the emigrants, and his treatment of the sick, with full explanation of the causes of every death ; and to define the duties and powers of the surgeon in respect of the emigrants committed to his care ;
- (q) to define and regulate the powers and duties of the several officers appointed by the Government under this Act ;
- (r) generally to provide for the security, well-being and protection of emigrants ; and
- (s) to carry into effect the provisions of Chapter XI :

Provided that the Local Government may, in special cases, notwithstanding anything contained in rules made under clause (h) of this section, permit an emigrant-vessel to sail, though it does not carry the proportion of women required to be carried in ordinary cases.

(2) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

## CHAPTER XIII.

### OFFENCES.

82. (1) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act,— Unlawful recruiting.

- (a) makes, or attempts to make, any agreement with any Native of India, purporting to bind him to emigrate, or,
  - (b) in consideration of any hire or reward, induces, or attempts to induce, any Native of India to leave any place for the purpose
- of

*(Chapter XIII.—Offences.)*

of emigrating, or otherwise acts or is employed as a recruiter of emigrants, or

- (c) in consideration of any hire or reward, receives into or detains in any place, or, being a recruiter, in any place other than a place in which accommodation has been provided in accordance with this Act or the rules made under this Act, any person with a view to his being registered as an emigrant, or after his registration as an emigrant and before his departure for the depôt at the port of embarkation,

shall be punishable with fine which may extend to five hundred rupees.

(2) If any person, other than a recruiter licensed under this Act, commits an offence under this section, any police-officer may arrest him without warrant.

Recruiters  
removing  
unregistered  
emigrants to  
depôt.

83. Whoever, being a recruiter licensed under this Act, —

- (a) before any intending emigrant has been registered under this Act as an emigrant,—

(i) removes or attempts to remove him to a depôt, or

(ii) induces, or attempts to induce, him to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned, or

(iii) aids, or attempts to aid, him in leaving any such local limits or going to any depôt, or

- (b) fails to give a true copy of the statement with which he is provided under section 22 to any person whom he invites to emigrate, or

(c) fails

*(Chapter XIII.—Offences.)*

- (c) fails to provide any emigrant whom he has engaged, and who has been registered at a place beyond the limits of the port of embarkation, with suitable lodging and food, or otherwise ill-treats any emigrant on his journey to the dépôt,

shall be punishable with fine which may extend to five hundred rupees.

84. Whoever, by means of intoxication, coercion or fraud, causes or induces, or attempts to cause or induce, any Native of India to emigrate, or to enter into any agreement to emigrate, or to leave any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Fraudulently inducing Native to emigrate.

85. Whoever,—

- (a) without lawful authority, issues any written order to the Police to assist himself or any other person to procure emigrants, or

False representation of Government authority.

- (b) falsely represents that any emigrants are required by the Government or are to be engaged on behalf of the Government,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

86. Any master of a vessel who—

- (a) knowingly receives on board his vessel any emigrant who has not complied with the provisions of this Act or the rules made under this Act, so far as they are binding on him, or,

Receiving emigrants on board vessel in contravention of Act.

- (b) not being licensed under this Act, knowingly receives any emigrant on board his vessel, or,

- (c) being licensed under this Act, knowingly receives on board his vessel any emigrant

in



## (Chapter XIII.—Offences.)

in excess of the number specified in his license,

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees for each emigrant so received, or with both; and the vessel, her tackle, apparel and furniture, may be declared by the Court before which the master is tried to be forfeited to His Majesty.

Fraudulent  
acts on part  
of master.

87. Any master licensed under this Act who fraudulently does, or suffers to be done, any act or thing whereby the license becomes inapplicable to the altered state of the vessel or other matter to which the license relates, shall be punishable with fine which may extend to five thousand rupees,

and he may also be sued on any bond which he may have executed under section 58.

Clearance  
without  
compliance  
with Act.

88. Any master of an emigrant-vessel who clears, or attempts to clear, his vessel outwards when any of the provisions of section 53, 55 or 56 have not been complied with in respect of his vessel, shall be punishable with fine which may extend to four thousand rupees.

Failure of  
master to  
comply with  
provisions as  
to lists and  
passes.

89. Any master who receives on board his vessel any emigrants and fails to comply with the requirements of sections 62, 63 and 64 in respect of those emigrants, shall be punishable with fine which may extend to two hundred rupees for each emigrant so received on board.

Master  
taking on  
board, after  
clearance,  
emigrants  
not entered  
in list.

90. Any master who, having cleared his vessel, takes on board any emigrant not entered in the list mentioned in section 62 or not furnished with a pass required by that section, shall be punishable with fine which may extend to two hundred rupees for each emigrant so taken.

Master  
landing  
emigrant at

91. Any master who lands any emigrant in any country other than the country for which he has

been

*(Chapter XIII.—Offences.)*

been shipped by the Emigration Agent, shall be punishable for every emigrant so landed with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both, unless the landing has been caused by stress of weather or unavoidable accident, or has taken place under the provisions of section 73 or 74.

other than specified country.

92. Any master of a sailing-vessel leaving the port of Calcutta with emigrants on board who—

Failure to comply with provisions as to leaving Calcutta.

(a) does not leave Garden Reach with his vessel within the time prescribed in section 71, or,

(b) without reasonable excuse, causes or allows his vessel to go below Garden Reach without being in tow of such a steamer as is referred to in section 72,

shall be punishable with fine which may extend to one thousand rupees.

93. (1) Any emigrant who—

(a) deserts before arrival at dépôt, or

(b) refuses without reasonable cause to proceed to the dépôt,

Emigrant deserting or refusing to proceed to dépôt.

shall be punishable with fine which may extend to twenty rupees, or to the cost incurred in entering into an agreement with, registering and conveying him to the dépôt, whichever is greater, and, in default of payment of the fine, with imprisonment which may extend to one month.

(2) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

94. (1) Any emigrant who—

(a) deserts from the dépôt, or

(b) without embark.

Emigrant deserting from dépôt or failing to embark.

## (Chapter XIII.—Offences.)

- (b) without reasonable cause, refuses or neglects to embark when called upon to do so by the Emigration Agent,

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or to double the amount of the cost incurred in entering into an agreement with, registering and conveying him to the depôt, and maintaining him therein, or with both.

(2) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

Causing, or permitting, embarkation of emigrant in contravention of section 59.

95. Any person who causes, or any master who knowingly permits, any emigrant to embark contrary to the provisions of section 59, shall be punishable with fine which may extend to two hundred rupees for each emigrant so embarked.

Offences against provisions of Chapter XI.

## 96. Whoever,—

- (a) without having first obtained the permission of the Local Government referred to in section 75, sub-section (1), enters or attempts to enter into an agreement purporting to bind any Native of India to depart by sea out of India for any of the purposes specified in the said sub-section, or
- (b) causes any Native of India engaged by him for any such purpose as aforesaid to depart from any port which is not a port from which emigration is lawful, or which has not been notified under clause (i) of the explanation to section 75, or
- (c) causes any Native of India engaged by him, after grant of the permission referred to in section 76, to depart by sea out of India

*(Chapter XIII.—Offences.)*

India without registration of the particulars required by section 77, subsection (2),

shall, on conviction by a Magistrate of the first class, be punishable with fine which may extend to two hundred and fifty rupees for each Native of India in respect of whom the offence is committed.

97. Prosecutions under sections 86 to 96 both inclusive shall not be instituted except as follows, Institution of prosecutions.  
namely:—

- (a) prosecutions under sections 86 to 92, both inclusive, by the Emigration Agent, or by the Protector of Emigrants, or by an officer appointed for the purpose by the Local Government;
- (b) prosecutions under section 93, by or with the sanction of a Magistrate or Registering Officer or of the Protector of Emigrants at the port of embarkation ;
- (c) prosecutions under section 94, by the Emigration Agent with the sanction of the Protector ;
- (d) prosecutions under sections 95 and 96, by the Protector of Emigrants or by an officer appointed for the purpose by the Local Government.

98. The following shall be good defences to charges under sections 93 and 94, respectively, namely:—

- (a) to a charge under section 93, that the accused person or other emigrants accompanying him has or have been ill-treated, deceived or defrauded by the recruiter or any person under his control ;
- (b) to a charge under section 94, that the emigrant has suffered any ill-treatment or neglect in the depôt or on the journey thither.

99. All

(Chapter XIII.—Offences. Chapter XIV.—Supplemental.)

Power for  
Customs-  
officers to  
search and  
detain for  
purposes of  
Act.

99. All the powers for the time being conferred by law on officers of sea-customs with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act.

## CHAPTER XIV.

### SUPPLEMENTAL.

Power for  
Local Gov-  
ernment to  
appoint  
Magistrate  
for purposes  
of Act.  
Suits against  
Emigration  
Agent for  
breach of  
duty.

100. The Local Government may appoint any person to perform within a specified area the functions of a Magistrate under this Act.

101. (1) Where an Emigration Agent is chargeable with a breach of any duty to an emigrant arising from any agreement with the emigrant or imposed by this Act or the rules made under this Act, the Protector of Emigrants may, if he thinks fit, institute a suit on behalf of the emigrant against the Emigration Agent for the recovery of compensation for the breach.

(2) In awarding compensation under this section all sums ordered to be paid under section 46 or section 48 shall be taken into consideration.

Power for  
Governor  
General in  
Council to  
determine  
probable  
lengths of  
voyages for  
purposes of  
Act.

102. (1) The Governor General in Council may, by notification in the Gazette of India, determine what shall be held to be, for the purposes of this Act, the probable length of the voyages by sailing-vessels and vessels using steam power, respectively, from any port from which, to any country to which, emigration is for the time being lawful.

(2) Until otherwise determined under this section, the probable length of the voyage by sailing-vessels from the ports mentioned in the third schedule to the countries mentioned in that schedule, shall be deemed to be the lengths stated in that schedule.

103. On

*(Chapter XIV.—Supplemental.)*

103. On and from such a date as the Governor General in Council may, by notification in the Gazette of India, have fixed or may hereafter, by like notification, fix in this behalf with respect to any protected Native State adjoining the Straits Settlements, or with respect to any country for labour in which Natives of India are recruited exclusively through the agency of the Government of the Straits Settlements, a Native of India departing by sea out of British India under an agreement to labour for hire in any such State or country shall not, so long as the notification continues to apply to the State or country, be deemed to emigrate within the meaning of this Act.

Provisions  
supplemen-  
tary to  
section 2,  
sub-section  
(1) (iv), of  
this Act.

104. The provisions of this Act shall apply to emigration from British Indian ports—

Application  
of Act to  
emigration  
from British  
ports to  
French and  
Dutch  
Colonies.

(a) to the French Colonies, under the terms of the Convention executed at Paris on the first day of July 1861, and ratified at the same place on the thirtieth day of July 1861, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French; and

(b) to the Netherlands colony of Dutch Guiana under the terms of the Convention executed at the Hague on the eighth day of September 1870, and ratified at the same place on the seventeenth day of February 1872, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of the Netherlands:

Provided that emigration to the French Colonies, or any of them, shall not be lawful until a notification under section 4, sub-section (1), has been issued in respect thereof; but subject to this proviso, in any case in which there is any conflict between the provisions

## (Chapter XIV.—Supplemental.)

provisions of this Act and those contained in either of those Conventions, the latter shall prevail.

Application of Act to proceedings in British India connected with emigration from French ports in India to French colonies.

105. The provisions of this Act shall, so far as they relate to proceedings which are to be conducted in British India, apply, in the case of Natives of India who depart by sea from a French port in India under an agreement to labour for hire in a French colony, under the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French referred to in the last foregoing section as if such Natives were emigrants within the meaning of this Act :

Provided that, in any case in which there is any conflict between the provisions of this Act and those contained in that Convention, the latter shall prevail.

Prohibition of departure by land of a Native of India under an agreement to labour for hire in some country beyond the sea.

106. (1) The departure by land out of British India of a Native of India under, or with a view to entering into, an agreement to labour for hire in some country beyond the sea other than the Island of Ceylon or the Straits Settlements is prohibited :

Provided that nothing in this section applies to the departure by land of a Native of India for the purpose of departing by sea from a French port in India under an agreement to labour for hire in a French colony in accordance with the Convention referred to in section 104, clause (a), and section 105.

(2) Whoever induces, or attempts to induce, any Native of India to depart by land out of British India in contravention of this section shall be deemed to have committed an offence under section 82.

Power to declare whole or part of Act and rules inapplicable to Natives of India engaged for His Majesty's Government to labour for hire in any

107. The Governor General in Council may, by notification in the Gazette of India, declare that all or any of the provisions of this Act or the rules thereunder shall not apply, or shall apply subject to such conditions, modifications or restrictions as to the Governor General in Council may seem expedient in the case of Natives of India departing out of British India under an agreement made with, or on behalf of, His

(Chapter XV.—Savings and Repeals. The First Schedule.—Countries to which Emigration is lawful.)

His Majesty's Government to labour for hire in any country beyond the sea :

Provided that no notification under this section shall be issued unless the Governor General in Council is first satisfied that the fair treatment of Natives of India so departing out of British India has, by rules or otherwise, duly been secured.

## CHAPTER XV.

### SAVINGS AND REPEALS.

108. Nothing in this Act or in any rule made under this Act shall apply to any vessel belonging to, or in the service of, His Majesty or of the Government of India. Saving for Government vessels.

VII of 1871. 109. All contracts entered into under the Indian Emigration Act, 1871, and Act No. XIV of 1872 (*to exempt the Straits Settlements from the Indian Emigration Act, 1871*), or under any enactment hereby repealed, and in force at the commencement of this Act, shall, so far as they are consistent with this Act, be deemed to have been entered into under this Act. Savings.

110. The enactments mentioned in the fourth schedule are hereby repealed to the extent specified in the fourth column thereof. Repeals.

## THE FIRST SCHEDULE.

(See section 4.)

### COUNTRIES TO WHICH EMIGRATION IS LAWFUL.

I.—The British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis, Fiji, and Seychelles.

II.—The Netherlands Colony of Dutch Guiana.

II.—The Danish Colony of St. Croix.

## THE SECOND SCHEDULE.



[illegible]

(*The Third Schedule.—Probable Lengths of Voyage  
by Sailing Vessel under this Act.*)

THE THIRD SCHEDULE.

(See section 102.)

PROBABLE LENGTHS OF VOYAGE BY SAILING VESSEL UNDER  
THIS ACT.

FROM CALCUTTA—

To Mauritius . . . . .	{	From the month of April to the month of October, both inclusive, ten weeks ; and from the month of November to the month of March, both inclusive, eight weeks.
To Fiji, British Guiana, Trinidad, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, and Dutch Guiana. }		Eighteen weeks.
To Natal . . . . .		Twelve weeks.
To Jamaica and St. Lucia . . . . .		Twenty weeks.

FROM MADRAS—

To Mauritius . . . . .	{	From the month of April to the month of October, both inclusive, seven weeks ; and from the month of November to the month of March, both inclusive, six weeks.
To the Seychelles . . . . .	{	During the north-east monsoon, five weeks ; and during the south-west monsoon, six weeks.
To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, and Dutch Guiana. }		Nineteen weeks.
To Natal . . . . .		Ten weeks.
To Fiji . . . . .		Seventeen weeks.

FROM BOMBAY—

To Mauritius . . . . .	{	From the month of April to the month of September, both inclusive, five weeks ; and from the month of October to the month of March, both inclusive, six weeks.
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(*The Third Schedule.—Probable Lengths of Voyage by Sailing Vessel under this Act. The Fourth Schedule.—Enactments repealed.*)

THE THIRD SCHEDULE—*contd.*

FROM BOMBAY—*contd.*—

To Jamaica, British	} Nineteen weeks.
Guiana, Trinidad, St.	
Lucia, Grenada, St.	
Vincent, St. Kitts,	
Nevis, St. Croix, and Dutch Guiana.	
To Natal . . . .	Ten weeks.
To Fiji . . . .	Seventeen weeks.

THE FOURTH SCHEDULE.

(*See section 110.*)

ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
1883	XXI	The Indian Emigration Act, 1883.	So much as has not been repealed.
1890	XVIII	The Indian Emigration Act (1883) Amendment Act, 1890.	The whole.
1896	I	The Indian Emigration Act (1883) Amendment Act, 1896.	Ditto.
1897	VII	The Indian Emigration Act Amendment Act, 1897.	Ditto.
1902	X	The Indian Emigration (Amendment) Act, 1902.	Ditto.
1904	XII	The Indian Emigration (Amendment) Act, 1904.	Ditto.
1908	XII	The Indian Emigration (Amendment) Act, 1908.	Ditto.

## ACT NO. XVIII OF 1908.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 18th  
December 1908.)*

### An Act further to amend the Indian Merchant Shipping Act, 1880.

VII of 1880.

**WHEREAS** it is expedient further to amend the Indian Merchant Shipping Act, 1880 ; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Merchant Shipping (Amendment) Act, 1908 : and

Short title  
and com-  
mencement.

(2) Section 4 shall come into force on such date or dates as the Governor General in Council may, by notification in the Gazette of India, direct either generally for all foreign ships or specially for the ships belonging to any specified foreign countries. The rest of this Act shall come into force on the first day of January 1909.

VII of 1880.

2. (1) In section 3, clause (b), of the Indian Merchant Shipping Act, 1880, after the word " or " the words " to any sailing ship of less than one hundred and fifty tons register employed " shall be inserted.

Amendment  
of section 3,  
Act VII,  
1880.

(2) To the same section the following shall be added, namely :—

" The Governor General in Council may, from time to time, by notification in the Gazette of India, exclude from or bring again within the operation of sections 33 to 43, inclusive, any class of steamships of less than one hundred and fifty tons register which are employed in plying coastwise between ports situate in India and Ceylon, and do not carry cargo."

3. In

Amendment  
of section 4  
of same Act.

3. In section 4 of the said Act, in the definition of "unsafe", after the word "intended" the following words shall be inserted, namely :—

"and a ship shall be deemed to be unsafe when so loaded as to submerge in perfectly smooth salt water the centre of the disc indicating the load-line."

Substitution  
of new section 85 of  
same Act.

4. For section 85 of the said Act the following shall be substituted, namely :—

Application  
of provisions  
respecting  
overloading  
and deck and  
load-lines to  
foreign  
ships.

"85. The provisions of this Act for the prevention of the overloading and improper loading of British ships and for the marking of deck and load-lines on British Indian and British ships shall, with the exception of sub-sections (2) and (3) of section 35, apply to foreign ships also when in ports of British India, unless such foreign ships, if in ports of the United Kingdom, would be entitled to the benefit of a direction of His Majesty in Council under section 445 of the Merchant Shipping Act, 1894 :

57 & 58  
Vict., c. 60.

Provided that nothing in this section shall apply to any foreign ship not bound to a port in British India which comes into any port in British India for any purpose other than the purpose of embarking or landing passengers or taking in or discharging cargo or taking in bunker coal :

Provided also that in the case of the detention of a foreign ship the application of the provisions of this Act shall be subject to the following modifications, namely :—

(i) a copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the country to which the ship belongs at or nearest to the port in which such ship is detained ;

(ii) the consular officer, on the request of the owner or master of the ship, may require that the person appointed by the Local Government under section 8 to survey the ship shall be accompanied by such person

person as the consular officer may select, and in that case, if the surveyor and that person agree, the Local Government shall cause the ship to be detained or released accordingly; but, if they differ, the Local Government may act as if the requisition had not been made, and the owner and master shall have the like appeal to a Court of Survey touching the report of the surveyor as is hereinbefore provided in the case of a British ship; and

- (iii) where the owner or master of the ship appeals to the Court of Survey, the consular officer, on his request, may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Local Government."

CALCUTTA  
SUPERINTENDENT GOVERNMENT PRINTING, INDIA  
8, HASTINGS STREET

# INDEX

TO THE

## ACTS PASSED BY THE GOVERNOR GENERAL IN COUNCIL IN THE YEAR 1908.

	ACT.	SECTION.
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ACT VII OF 1870—		
Section 16, repealed . . . . .	V	s. 156 and sch. V.
Schedule I, article 1, amended . . . . .	"	s. 155 & sch. IV.
Schedule II, article 11, repealed in part . . . . .	"	s. 155 & sch. IV.
article 15, repealed . . . . .	"	s. 156 & sch. V.
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section 15, proviso added . . . . .	"	s. 4.
section 17, amended . . . . .	"	s. 5.
section 18A, added . . . . .	"	s. 6.
section 21, amended . . . . .	"	s. 7.
section 25, new section substituted . . . . .	"	s. 8.
section 26, new section substituted . . . . .	"	s. 9.
section 27, repealed . . . . .	"	s. 10.
section 28, amended . . . . .	"	s. 11.
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ACT III OF 1877, REPEALED . . . . .	XVI	s. 93 & sch.
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ACT XVIII OF 1879—		
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To come into force on date to be notified : *see* Act XVIII of 1908, s. 1 (2).

[Price four annas and three pies.]



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Act XVIII of 1881— sections 5 and 6, new sections substituted . . . . .	XIII	s. 4.
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section 22, clause (c), amended . . . . .	"	s. 6.
section 23, clause (c), amended . . . . .	"	s. 6.
section 25, amended . . . . .	"	s. 5.
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Act IV of 1882. sections 85 to 90 inclusive, 92 to 94 inclusive, 96, 97, 99 and part of section 100, repealed.	V	s. 156 & sch. V.
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Act XV of 1882— section 3, last paragraph, repealed . . . . .	"	s. 156 & sch.
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Act VII of 1886, REPEALED . . . . .	XVI	s. 93 and sch.
Act IX of 1887— section 86, repealed . . . . .	IX	s. 32 and sch. III.
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ACT VI OF 1900, repealed in part . . . . .	V	s. 156 and sch. V.
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section 218, new section substituted . . . . .	„	s. 2.
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